TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~[illegible]~~ 629

JAMES CODDINGTON, PLAINTIFF IN ERROR,

vs.

LYMAN RICHARDSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 21, 1868.

SUPREME COURT OF THE UNITED STATES.

No. 398.

JAMES CODDINGTON, PLAINTIFF IN ERROR,

vs.

LYMAN RICHARDSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you or some of you, between Lyman Richardson, plaintiff, and James Coddington, defendant, it is alleged that manifest error hath happened to the great damage of the said James Coddington, as by his plea appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf:

You are hereby commanded, if judgment [if judgment] be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Su-

2 preme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Washington, this eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first.

[SEAL.] P. P. ENOS, *Clerk.*

The answer of the judges of the circuit court of the United States for the southern district of Illinois to the foregoing writ:

The record and process, whereof mention is therein made, follow in these words, to wit:

3 Pleas in the circuit court of the United States of America for the southern district of Illinois, held in the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and, in the absence of the Hon. David Davis, one of the justices of the Supreme Court of the United States of America, pro tempore sole judge of said circuit court, on Wednesday, the eleventh day of July, in the June term of said court, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first.

P. P. ENOS, *Clerk.*

LYMAN RICHARDSON } In trover.
v.
JAMES CODDINGTON. }

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Lyman Richardson, plaintiff, who is a citizen of the State of Arkansas, puts in his place Messrs. Stuart, Edwards and Brown, his attorneys, against James Coddington, defendant, who is a citizen of the State of Illinois, and resident of said district, in a plea of trover.

James Coddington, defendant, puts in his place Messrs. Palmer and Hay, his attorneys, at the suit of the plaintiff in the plea aforesaid.

4 SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the thirtieth day of March, in the year of our Lord one thousand eight hundred and sixty-six, came said plaintiff, by his said attorneys, and filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, his precipe, praying the issue of a writ of summons against said defendant in the plea aforesaid; damages twenty thousand dollars, returnable to the June term of said court, A. D. 1866; also, at the same time, filed his bond for costs in said entitled cause, which said bond is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Circuit court, June term, A. D. 1866.

LYMAN RICHARDSON }
v. } In trover.
JAMES CODDINGTON. }

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 30th day of March, 1866.

STUART, EDWARDS & BROWN.

5 (Indorsed:) Filed March 30th, A. D. 1866.

P. P. ENOS, *Clerk.*

Whereupon a writ of summons was issued, as prayed for, directed to the marshal of the southern district of Illinois, to execute, and was afterwards, to wit, on the twelfth day of April, in the year last aforesaid, returned by said marshal, executed upon the said defendant; which said writ, and the return of said marshal indorsed thereon, are in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

We command you that you summon James Coddington, if he be found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois, at the next term thereof, to be holden at Springfield, in the district aforesaid, on the first Monday of June next, to answer unto Lyman Richardson in an action of trover, and to his damage, as he alleges, of twenty thousand dollars; and have you then and there this writ.

6 Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this thirtieth day of March, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninetieth year.

[L. S.] P. P. ENOS, *Clerk.*

Executed this writ on the 6th day of April, 1866, by reading the same to the within-named James Coddington.

D. L. PHILLIPS, *U. S. M.*,
Per E. C. MATHENY, *Deputy.*

(Indorsed:) Filed April 12th, A. D. 1866.

P. P. ENOS, *Clerk.*

And afterwards, to wit, on the fourth day of June, in the year last aforesaid, came again the said plaintiff, by his said attorneys, and filed in said clerk's office his declaration in said cause; which said declaration is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Southern District of Illinois, ss:*

Of the June term, A. D. 1866, of the circuit court of the United States in and for the said district.

7 Lyman Richardson, who is a citizen of the State of Arkansas, plaintiff, complains of James Coddington, who is and was, at the commencement of this suit, a citizen of the State of Illinois, and a resident in said district, of a plea of trespass on the case—

For that, heretofore, to wit, on the 1st day of January, A. D. 1866, to wit, at the district aforesaid, the said plaintiff was lawfully possessed, as of his own property, of certain horses and mules, to wit: Sixty-four horses, of the value of one hundred and twenty-five dollars each, and forty-five mules, of the value of one hundred and fifty dollars each; being of the total value of $14,720; and being so possessed, the said plaintiff afterwards, to wit, on the day and year aforesaid, to wit, at the district aforesaid, casually lost the said horses and mules out of his possession, and the same afterwards, to wit, on the day and year aforesaid, to wit, at the district aforesaid, came to the possession of the said defendant by finding.

Yet the said defendant, well knowing the said horses and mules to be the property of the said plaintiff, and of right to belong to and appertain to him, but contriving, &c., have not, as yet, delivered the said horses and mules, or any of them, to the said plaintiff, although often requested so to do, and have hitherto wholly refused so to do; and afterwards, to wit, on the day and year last aforesaid, to wit, at the district aforesaid, converted and disposed of said horses and mules to his own use, to the damage of the plaintiff $20,000.

8

2d count. And for that whereas, also heretofore, to wit, on the first day of January, A. D. 1866, to wit, at the district aforesaid, the said plaintiff was lawfully possessed, as of his own property, of the undivided half of 64 horses, of the value of $125 each; and 45 mules, of the value of $150 each; being of the total value of $14,750; and being so possessed, the said plaintiff afterwards, to wit, on the day and year aforesaid, to wit, at the district aforesaid, casually lost the said horses and mules out of his possession, and the same afterwards, to wit, on the day and year aforesaid, to wit, at the district aforesaid, came to the possession of the said defendant by finding.

Yet the said defendant, well knowing the said horses and mules to be the property of the said plaintiff, and of right to belong to and appertain to him, but contriving, &c., have not, as yet, delivered the said horses and mules, or any of them, to the said plaintiff, although often requested so to do, and have hitherto wholly refused so to do; and afterwards, to

wit, on the day and year last aforesaid, to wit, at the district afore-
9 said, converted and disposed of said horses and mules to his own use, to the damage of the said plaintiff of $20,000; wherefore he sues, &c.

STUART, EDWARDS & BROWN, *A. P. G.*

(Indorsed:) Filed June 4th, 1866.

P. P. ENOS, *Clerk.*

Afterwards, to wit, on the eleventh day of June, in the June term of said court, in the year last aforesaid, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:

LYMAN RICHARDSON
v.
JAMES CODDINGTON. } In trover.

By agreement of the parties, by their attorneys, it is ordered by the court that this cause be set for trial on Tuesday, the twenty-sixth day of June instant.

And afterwards, to wit, on the twenty-sixth day of June, in the term and year last aforesaid, came said parties, plaintiff & defendant, by their respective attorneys, and filed in said clerk's office their stipulation; which said stipulation is in the words & figures following, to wit:

10 RICHARDSON
v.
CODDINGTON.

It is stipulated in this cause that the same shall be tried by the court without the intervention of a jury, and the plea of the general issue and joinder shall be considered as filed.

STUART, EDWARDS & BROWN, *for Pl'ff.*
PALMER & HAY, *for Def't.*

(Indorsed:) Filed June 26, 1866.

P. P. ENOS, *Clerk.*

Whereupon the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

LYMAN RICHARDSON
v.
JAMES CODDINGTON. } In trover.

Now comes the plaintiff, by Messrs. Stuart, Edwards and Brown, his attorneys; and now comes also the defendant, by Messrs. Palmer & Hay, his attorneys, and, issue being joined, by agreement, they waive the intervention of a jury, and for trial put themselves upon the court; and after proceeding with the trial of said cause until the hour of adjourn-
11 ment without concluding the same, the further trial thereof is postponed until to-morrow morning.

And afterwards, to wit, on the third day of July, in the term and year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

LYMAN RICHARDSON
v. } In trover.
JAMES CODDINGTON.

Now come again the parties, by their respective attorneys, and the court, having heard the arguments of counsel, not being sufficiently advised in the premises, takes time to consider.

Afterwards, to wit, on the fifth day of July, in the term and year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

LYMAN RICHARDSON
v. } In trover.
JAMES CODDINGTON.

12 Now come again the parties, by their respective attorneys, and the court, being now sufficiently advised in the premises, finds that the plaintiff was the owner of an undivided interest of one-half in forty-eight mules and fifty-two horses, part of the property described in the declaration, and that the defendant converted said interest to his own use prior to the commencement of this suit, and the court thereupon assesses the plaintiff's damages to the sum of five thousand dollars over and above three thousand dollars allowed said defendant for expenses in keeping said mules and horses.

It is thereupon considered and adjudged by the court that the plaintiff have and recover of and from said defendant the sum of five thousand dollars, so found and assessed as aforesaid, together with his costs by him about his suit in this behalf expended, amounting to the sum of one hundred eighty-nine dollars and ninety-five cents, and that he have execution therefor.

And afterwards, to wit, on the ninth day of July, in the term and year last aforesaid, came again the defendant, by his said attorneys, and filed in said clerk's office his motion for a new trial in said entitled cause; which motion is in the words and figures following, to wit:

13 LYMAN RICHARDSON
v. } Motion for new trial.
JAMES CODDINGTON.

Defendant moves for a new trial herein for reasons following:
1st. The finding and judgment of the court is erroneous.
2d. The damages are erroneously computed.
3d. The finding as to the damages was not warranted by the evidence.

HAY, *for Def't.*

(Indorsed:) Filed July 9th, 1866.

P. P. ENOS, *Clerk.*

Whereupon the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

LYMAN RICHARDSON
v. } In trover.
JAMES CODDINGTON.

Now come again the parties, by their respective attorneys, and the court, having heard the arguments of counsel on the motion of the de-

fendant for a new trial, heretofore entered herein, not being sufficiently advised in the premises, takes time to consider.

14 And afterwards, to wit, on the eleventh day of July, in the term and year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

LYMAN RICHARDSON } In trover.
v.
JAMES CODDINGTON. }

Now come again the parties, by their respective attorneys, and the court, having fully considered, and being now sufficiently advised in the premises, overrules the defendant's motion for a new trial herein, with leave to the defendant to prepare and have settled and filed a bill of exceptions herein during the next January term of this court.

And afterwards, to wit, on the twentieth day of February, in the January term of said court, in the year A. D. 1867, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

LYMAN RICHARDSON } In trover.
v.
JAMES CODDINGTON. }

15 On motion of the defendant, by Messrs. Hay and Palmer, his attorneys, leave is granted him by the court to settle and file his bill of exceptions herein by the third day of the next June term of this court.

And afterwards, to wit, on the second day of July, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

LYMAN RICHARDSON } In trover.
v.
JAMES CODDINGTON. }

On motion of the defendant, by Messrs. Palmer and Hay, his attorneys, the time within which to settle and file a bill of exceptions herein is extended to the third day of the next January term of this court.

And afterwards, to wit, on the sixth day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and sixty-eight, the following further proceedings were had in said court in said entitled cause, and were entered of record, to wit:

16 LYMAN RICHARDSON } In trover.
v.
JAMES CODDINGTON. }

On motion of Messrs. Palmer and Hay, attorneys for the defendant, the time within which to file and settle a bill of exceptions herein is extended until Monday, the thirtieth day of January instant.

And afterwards, to wit, on the thirtieth day of January, in the term and year last aforesaid, came again said parties, by their respective attorneys, and filed in said clerk's office the bill of exceptions in said entitled cause, which was signed, sealed, and ordered by the court to be made a part of the record in said cause, and the following order entered of record, to wit:

LYMAN RICHARDSON
v.
JAMES CODDINGTON. } In trover.

Now comes the defendant, by M. Hay, esq., his attorney, and has settled, signed, and sealed his bill of exceptions herein, which is ordered to be filed and made a part of the record in this cause.

17 Which said bill of exceptions is in the words and figures following, to wit:

LYMAN RICHARDSON
vs.
JAMES CODDINGTON. } In trover.

Be it remembered that upon the trial of this cause, by agreement of the respective parties present in court, and their attorneys, a jury was waived, and the cause was tried by the court by stipulation in writing, and all just and legal objections and exceptions which might be made were reserved by each party; and plaintiff, in order to maintain the issue in his behalf, introduced and read in evidence the depositions of Robert W. Crutsinger, J. Wheeler Smith, Augustus J. Corley, Richard W. Jones, William Hunter, and Henry T. Noble, taken before Charles P. Redmond, United States commissioner, at his office in the city of Little Rock, and State of Arkansas; that of Robert W. Crutsinger, on the eighth day of May, A. D. 1866; that of J. Wheeler Smith, on the ninth day of May, A. D. 1866; that of Augustus J. Corley, on the 10th day of May, A. D. 1866; that of Richard W. Jones, on the 14th day of May, A. D. 1866; and that of William Hunter and Henry T. Noble, on the 17th day of May, A. D. 1866, upon interrogatories and cross-interrogatories

18 in a commission issued out of said circuit court of the United States for the southern district of Illinois, to said Charles P. Redmond as special commissioner to take the same.

Deposition of Robert W. Crutsinger.

Int. 1st. What is your age, residence, & occupation?

Ans. Age, 30; residing, Little Rock, Arkansas; occupation, superintendent of hay-making.

2d. Are you acquainted with the parties to this suit?

Ans. I know the plaintiff, Richardson; not the defendant.

3d. Were you acquainted with Owny W. Barret? Is said Barret alive or dead? If dead, when and where did he die?

Ans. I was acquainted with Owny W. Barret in his lifetime; I am told he is dead; I don't know of my own knowledge; I understand he died in Lincoln, Illinois, in November last; don't know of my own knowledge.

4th. Do you know anything in relation to a partnership existing between said plaintiff and said O. W. Barret? If yea, state when

19 and where said partnership existed, and what was the business thereof. State also your means of knowledge.

Ans. I understood there was a partnership between Barret and plaint-

iff, from conversation with Barret and with Richardson both. They were in partnership, as I understood, in Little Rock and Duvall's Bluff, Ark., in summer & fall of 1865. The business was that of purchasing horses and mules at government sales. My means of knowledge is general rumour, and the fact of my being employed by them.

5th. Do you know of the purchase by plaintiff and the said Barret of any horses and mules? If yea, state when, where, and of whom such purchases were made; the number respectively of said horses and mules; their value; whether they were purchased by said parties as partners; by whom the money for the same was paid; and how much was paid by each party?

Answer. I do know of the purchase by Barret and plaintiff of a lot of horses and mules. They were bought in the summer and fall of 1865, at Duvall's Bluff cavalry depot, below Duvall's Bluff, and at Little Rock, Arkansas, and were purchased at government sales. I do not know how many they bought exactly; don't know their value; I did not know at the time of the purchase that the parties were partners; I afterwards understood so from general rumour, and the statements of Richardson and Barret to me; I do not know by whom the money was paid.

6th. What brand, if any, was placed on said horses and mules?

Answer. The horses and mules were most if not all of them branded on the neck "R."

7th. What became of the said horses & mules? If any were taken by or sent to O. W. Barret, state how many, their value, where they were taken or sent to.

Ans. There were fifty mules and twenty-five horses taken by me from Hicks' place on Arkansas River to St. Louis, to O. W. Barrett; I should value the horses at 75 or 80 dollars per head, and the mules at 100 to 125 dollars per head in St. Louis.

8th. Do you know if any of said horses and mules were afterwards in possession of said defendant? If so, state how many of each, where, and what their value severally.

Answer. I do not know anything of the matters inquired of in this interrogatory.

9th. Do you know of any demand made by the plaintiff, or any one for him, on defendant for said horses and mules, or any of them; and, if so, how many, and their value, & whether they were on such demand delivered to plaintiff, or any one for him?

Answer. I know nothing of the matters enquired of in the 9th interrogatory.

10th. Do you know anything further of benefit to either party to this suit? If yea, state the same fully.

Ans. Lyman Richardson, plaintiff, delivered to me the stock of horses and mules I took to St. Louis, and delivered to O. W. Barrett; pl'ff gave me about seventy-five dollars in money, and he also furnished 10 bales of hay to feed the stock; plaintiff also gave me a draft on St. Louis for six or seven hundred dollars to pay freight on the stock; I turned this draft over to Barrett and he paid the freight. I rendered an account to Barrett and he settled with me for my services and expenses. I sold one horse at St. Louis and gave the money to O. W. Barrett.

Cross-interrogatories:

1st. If you say that you are acquainted with the defendant, Coddington, state when and where you became acquainted with him.

Answer. I do not know Coddington.

2d. Have you any interest in the event of this suit, or in the horses and mules in controversy therein, or had you at any time any interest therein?

Answer. I have no interest in the event of this suit, or of the horses and mules in controversy, nor at any time have I had an interest in them.

Deposition of J. Wheeler Smith.

Int. 1st. What is your age, residence, and occupation?

Answer. Name is J. Wheeler Smith; of lawful age; residence, Little Rock, Arkansas; occupation, paymaster U. S. army.

2d. Are you acquainted with the parties to this suit?

Answer. I am acquainted with the plaintiff, Richardson; do not know defendant.

23 3d. Were you acquainted with Owny W. Barrett? Is said Barrett alive or dead? If dead, when and where did he die?

Answer. I was acquainted with Owny W. Barrett. I unders and he is dead; have heard he died in Illinois in the fall of 1865.

4th. Do you know anything in relation to a partnership existing between said plaintiff and said O. W. Barrett? If yea, state when and where said partnership existed and what was the business thereof. State also your means of knowledge.

Answer. I know a partnership existed between them. It existed at Little Rock & Duvall's Bluff, Arkansas, in the summer and fall of 1865. The business was buying mules and horses. I know they were partners, from frequent statements made to me by both Richardson & Barrett; was consulted by both of them as to their transactions in the purchase of the stock; and also from general rumour.

5th. Do you know of the purchase by plaintiff and the said Barrett of any horses and mules? If yea, state when, where, and of whom such purchases were made; the number respectively of said horses and mules; their value; whether they where purchased by such par-

24 ties as partners; by whom the money for the same was paid; and how much was paid by each party?

Answer. I know Richardson and Barrett, in the fall of 1865, purchased a large number of horses and mules. They were made at Little Rock, of Capt. Geo. H. Dobyns, A. Q. M., at the government sales. I think they bought about (150) one hundred and fifty; do not know the exact number. The mules, I think, were worth about one hundred dollars here per head, and the horses about seventy-five dollars per head here. I was interested in another lot of mules of the same class, bought at same time, which were taken to other markets and sold for about one hundred and fifty dollars per head. I know they were purchased by Richardson and Barrett as partners. I know that a portion of the money was paid by Richardson. I do not know of my own knowledge that Barrett paid any. I don't know how much was paid by each party or by either.

6th. What brand, if any, was placed on said horses and mules.

Answer. They were branded with letter "R" on the neck.

25 7th. What became of the said horses and mules?

Answer. The parties—Richardson and Barrett both told me that the mules and horses, or a portion of them, were shipped to Illinois; I do not know their value, where they were taken or sent to.

8th. Do you know if any of said horses & mules were afterwards in

possession of said defendant? If so, state how many of each, where, and what was their value severally?

Answer. I know nothing of the matters contained in the eighth interrogatory.

9th. Do you know of any demand made by the plaintiff, or any one for him, on defendant for said horses and mules, or any of them; and, if so, how many, and their value, and whether they were on such demand delivered to plaintiff, or any one for him?

Answer. I know nothing of the matters inquired of in the 9th interrogatory.

10th. Do you know anything further of benefit to either party to this suit? If yea, state the same fully.

26 Answer. I know that the mules and horses were nearly all bid off in Richardson's name; (I attended the sales every day;) I know that the bills of sale were made out in Richardson's name, for I saw them, and made out some of them myself for the quartermaster. I learned from Mr. Barrett that he did not wish his name used as a purchaser, for the reason that he had recently left the army as a quartermaster, and his accounts were unsettled.

Cross-interrogatories:

1st. If you say that you are acquainted with the defendant, Coddington, state when and where you became acquainted with him.

Answer. Don't know defendant, Coddington; never heard of him before.

2d. Have you any interest in the event of this suit, or in the horses and mules in controversy therein, or had you at any time any interest therein?

Answer. I have no interst in the event of this suit, or in the horses and mules in controversy, nor had I ever any interest therein.

27 *Deposition of Augustus J. Corley.*

Int. 1st. What is your age, residence, and occupation?

Answer. My name is Augustus J. Corly; of lawful age; reside in Arkansas; my occupation has been a wagon-master and dealer in stock.

2d. Are you acquainted with the parties to this suit?

Answer. I am acquainted with both parties.

3d. Were you acquainted with Owny W. Barrett? Is said Barrett alive or dead? If dead, when and where did he die?

Answer. I was acquainted with him; he is dead; he died in Lincoln, Illinois, on the 28th or 29th of October, 1865.

4th. Do you know anything in relation to a partnership existing between said plaintiff & said O. W. Barrett? If yea, state when and where said partnership existed, and what was the business thereof. State also your means of knowledge.

Answer. I understood from Barrett that he and the plaintiff were in partnership; the partnership existed here at Little Rock, last
28 summer and fall; they were buying stock; I was employed by them to herd and attend to their stock; I was paid sometimes by one and sometimes by the other.

5th. Do you know of the purchase by plaintiff and the said Barrett of any horses and mules? If yea, state when, where, and of whom such purchases were made; the number respectively of said mules and horses; their value; whether they were purchased by said parties as partners; by whom the money for the same was paid; and how much was paid by each party.

Answer. I know they bought horses and mules; they bought them during the months of August and September, 1865, at Little Rock, Arkansas, at government sales, of Capt. G. H. Dobyns, A. Q. M.; they bought 63 head of horses, and seventy-five head of mules at Capt. Dobyns's sale; the mules were worth here at that time about one hundred dollars a head; the horses were worth about seventy-five dollars per head; they were bought by the partners; bid off by Barrett in Richardson's name, those that I saw bid off; don't know by whom the money was paid; don't know how much was paid by each party.

29 6th. What brand, if any, was placed on said horses and mules?

Answer. The mules and horses were branded "R" on the right side of the neck; it was Richardson's brand.

7th. What became of the said horses and mules? If any were taken by or sent to said O. W. Barrett, state how many, their value, where they were taken or sent to.

Answer. I took or assisted in taking their stock from the sale to Hicks' plantation on Arkansas River, where they kept their stock; this lot was turned in with other stock kept there by them, which they had bought at cavalry depot near Duvall's Bluff.

About the 12th of September I assisted in selecting out the best horses and mules out of both lots for to ship to St. Louis for sale; we shipped about 84 head of horses and about 36 head of mules belonging to Richardson & Barrett. Barrett shipped them at Duvall's Bluff on the steamboat Albert Pearce, to St. Louis; and he, Barrett, and myself went with them, and also Sam. Coddington, on the boat. Barrett bought

30 five mules of a man named Cook; he bought them on partnership account. He paid betwixt 80 and 90 dollars per head. He found no sale for the stock in St. Louis, and he then moved them to Lincoln, Illinois, to feed and wait for a better market. He sold one mule on the road, or rather Coddington sold it for him. About the 18th or 19th of October, 1865, O. W. Barrett ordered me to go to Madison County, Illinois, after a lot of stock that was shipped to him from Little Rock by Richardson, the plaintiff. I went and got the stock at Mrs. Stelling's farm near St. Louis; there was forty-three head of horses and twenty-two head of mules; they belonged to Richardson & Barrett. They were the stock of Richardson & Barrett bought at government sales in Arkansas. I recognized them as the same stock I had charge of in Arkansas. In driving the stock from Snelling's to Lincoln five of the horses died; I took the balance to Lincoln, and turned them in with the other lot.

8th. Do you know if any of said horses and mules were afterwards in possession of said defendant? If so, state how many of each, where, and what was their value severally.

Answer. All of this stock spoken of, after its arrival at Lincoln, was put in possession of James Coddington. They were delivered

31 to James Coddington, defendant, by myself, and Sam. Coddington, acting as agent for Richardson & Barrett. The defendant, James Coddington, lives in Lincoln, Ill. I suppose the mules were worth from one hundred and twenty to one hundred and thirty dollars a head at the time they were delivered to defendant at Lincoln, and the horses at the same time from ninety to one hundred dollars.

9th. Do you know of any demand made by the plaintiff, or any one for him, on defendant for said horses and mules, or any of them; and, if so, how many, and their value, and whether they were on such demand delivered to plaintiff, or any one for him?

Answer. I know nothing of the matters inquired of in this 9th interrogatory.

10th. Do you know anything further of benefit to either party to this suit? If yea, state the same fully.

Answer. There were a large number of horses bought by Richardson & Barrett at the cavalry depot near Duvall's Bluff—(there were no mules sold at cavalry depot)—and I took them to Hicks' farm on
32 the Arkansas River. These were the same lot of stock that I mentioned, in answer to 7th interrogatory, as being on the Hicks place when the stock from Little Rock was taken there. This stock made up with the other the lot we shipped from, as spoken of in answer to 7th interrogatory. The Duvall's Bluff stock was branded "I C" on left shoulder, and R on right side of the neck. The Little Rock stock was branded "S" on the neck, except a few horses branded "I C." After O. W. Barrett's death, in the month of December, fifty-three head of the horses branded "I C," and nine head of small mules branded "S," were shipped to Richardson, the plaintiff, at Chicago, by me, they being turned over by the defendant, Coddington, to me for that purpose.

Cross-interrogatories:

1st. If you say you are acquainted with the defendant, Coddington, state when & where you became acquainted with him.

Answer. I became acquainted with defendant at Lincoln, in September, 1865.

2d. Have you any interest in the event of this suit, or in the
33 horses and mules in controversy therein, or had you at any time any interest therein?

Answer. I have no interest in the event of this suit, or of the horses and mules in controversy. I never had any interest.

3d. Were you at any time in Logan County, Illinois, engaged in the business or service of looking after mules and horses owned by the plaintiff or by the plaintiff & Barrett? If so, state when. State by whom you were employed, & whether you visited said county on different occasions for that purpose, & how long you were there each time.

Answer. I was in Logan County, Illinois, looking after mules and horses owned by plaintiff and Barrett. I was there in Sept., October, and November, 1865. I was employed by plaintiff. I did visit that county several times for that purpose. I was there about a month & ten days the first time, and the second time about ten days.

4th. Are you acquainted with John V. Franklin, of Logan County, Illinois? If so, state whether, at any time during your visit to Logan County, Illinois, to look after mules and horses for the plaintiff,
34 in the fall of 1865, at his house or at any other place, in speaking to him of the mules and horses in controversy, you spoke of them as being mules and horses purchased by Coddington, and said Coddington did not buy any condemned stock, (referring to stock purchased at Little Rock;) that Sam. Coddington would not have them; but that he bought artillery horses and good, serviceable mules; and that Coddington's horses and mules which he had bought at Little Rock were all good & doing well; but that the stock of the plaintiff and O. W. Barrett were "I. C." (meaning condemned) stock, and were not worth much. Did you, at any time during your first visit to said county of Logan, in the fall of 1865, before your return to said county with the plaintiff, use such language or conversation with said Franklin, at his house or elsewhere, or language to that effect or substance?

Answer. I am a little acquainted with John V. Franklin; i. e., I know him when I see him. I do not recollect speaking at any time of the horses and mules as purchased by Coddington. I do not recollect say-

ing that Coddington bought no condemned stock. I never had any such conversation as that inquired of in the 4th cross-interrogatory with defendant, at his house or elsewhere; nor any conversation of that substance and effect.

35 5th. If you say you did not use such language, state what language you did use as to the purchase & ownership of said stock in controversy in speaking upon that subject to said Franklin, whilst you were in said county at the time referred to, and before your return to said county with the plaintiff.

Answer. I have no recollection of ever talking to Franklin about the ownership of the stock.

6th. State if you did not, in the grocery store of E. W. Smith, in Lincoln, Illinois, about the time of or shortly after the death of O. W. Barrett, and just previous to your leaving said place on the occasion of your first visit to Logan County, Illinois, in the fall of 1865, in the presence of W. D. Wyatt & Wm. F. Ryan, have a conversation with one or both of them about said horses and mules in controversy, and also in relation to some stock which you were then attending to for the plaintiff. If so, state whether at that time, "in regard to the question of whether said stock was not diseased," you did not say, "that Coddington was sensible; that none of his horses were sick, (referring to the horses he had bought at Little Rock;) that he bought none but good horses and mules; that none of his were condemned stock; but that the stock you were attend-

36 ing to for the plaintiff was condemned stock, and was quite worthless; and that you would not stay there longer to attend to it; that they would not pay for the wintering of them." Did you on the occasion referred to, or on any other occasion, make use of such language, or language in substance the same; or what did you say in regard thereto at that time? Answer fully and particularly.

Answer. I do not recollect any such conversation as is inquired of in this 6th cross-interrogatory; I do not [I do not] know either W. D. Wyatt or [or] Wm. F. Ryan; the only conversation I recollect having any reference to 6th cross-interrogatory was with M. W. Barrett; he said that he would attend to the portion of stock that he and Coddington claimed to belong to Richardson & O. W. Barrett, for the purpose of making the most for O. W. Barrett's widow. I told him in that event I would leave and come to Little Rock; I did not make use of language in substance [in substance] the same as that inquired of in 6th cross-interrgatory, only as I have stated; that is all I know in relation to the matters of the 6th cross-interrogatory.

7th. Did you state to any person or persons, after your return to Logan County, Illinois, about the month of December, 1865, that you

37 had an interest in the stock in controversy in this suit to the amount of $800? Did you or not so state to John V. Franklin, at his house in Lincoln, after such return, or elsewhere? Did you or not so state to Harry Hurlburt, near the depot in Lincoln, in the presence of defendant; and did you or not so state to Samuel Coddington, in Lincoln, at or about the same time?

Answer. I did not state that I had an interest of eight hundred dollars in the stock; only that I had an interest to take care of it, as I was employed to see after it. I did not so state to John V. Franklin. I did not so state to Hurlburt, in presence of defendant, only as I have stated in this answer. I did not so state to Samuel Coddington.

8th. By what name were you known whilst in Logan County, Illinois? Were you or not generally called "Gus" or "Gus Corley?"

Answer. I am known and am generally called "Gus" or "Gus Corley."

9th. Where do you now reside? What business do you now follow; and what has been your occupation in life?

38 Answer. I now reside at Little Rock; I am now attending to stock; my occupation has been a farmer, but it is a good while since I done any of it.

Deposition of Richard W. Jones.

Int. 1st. What is your age, residence, and occupation?

Answer. My name is Richard W. Jones; forty-six years of age; I reside at Little Rock, Arkansas; occupation, a merchant.

2d. Are you acquainted with the parties to this suit?

Answer. I am acquainted with the plaintiff only.

3d. Were you acquainted with Owny W. Barrett? Is said Barrett alive or dead? If dead, where and when did he die?

Answer. I was very well acquainted with O. W. Barrett. I understand he is dead. I understand he died in October, 1865, at Lincoln, Illinois.

4th. Do you know anything in relation to a partnership existing between said plaintiff and said O. W. Barrett? If yea, state when and where said partnership existed, and what was the business thereof.

39 State also your means of knowledge.

Answer. I know something of such a partnership; it existed in the fall of 1865; in the horse & mule business; it existed in the State of Arkansas. My means of knowledge is that I have heard both said parties speak of the partnership. I was asked by Barrett to go into business with them. They kept their safe and money in my store, and did considerable of their business there. I was confidential with both of them. Barrett borrowed some money of me, about two hundred and eighty dollars on account of the partnership, which was to be paid for and was paid for by Richardson, the plaintiff. This occurred in September, 1865. I know they were reputed as partners among their friends here; and Barrett told me, just before he left here with the horses, that he was going to take his and Richardson's horses up to Illinois, and put them on pasture and get them in order to sell.

5th. Do you know of the purchase by plaintiff and the said Barrett of any horses and mules? If yea, state when, where, and of whom such purchases were made; the number respectively of said horses and mules; their value; whether they were purchased by said parties as partners; by whom the money for the same was paid; and how much was

40 paid by each party.

Answer. I do not know of my own knowledge anything of matters in this interrogatory, except Barrett told me that he (Barrett) and Richardson had purchased horses and mules at government sale at Little Rock.

6th. What brand, if any, was placed on said horses and mules?

Answer. I do not know what brand was placed on the horses.

7th. What became of the said horses and mules? If any were taken by or sent to O. W. Barrett, state how many, their value, where they were taken or sent to?

Answer. I know nothing about the matters in this interrogatory, except as before stated.

8th. Do you know if any of said horses & mules were afterwards in possession of said defendant? If so, state how many of each, where, & what was value severally.

Answer. I know nothing of the matters inquired of in the 8th cross-interrogatory.

41 9th. Do you know of any demand made by the plaintiff, or any one for him, of defendant for said horses and mules, or any of them; and, if so, how many, and their value, and whether they were on such demand delivered to plaintiff or any one for him?

Answer. I do not know anything of the matters inquired of in this 9th cross-interrogatory.

10th. Do you know anything further of benefit to either party to this suit? If yea, state the same fully.

Answer. I do not know as I know anything further of benefit to either party to this suit.

Cross-interrogatories:

1st. If you say you are acquainted with the defendant, Coddington, state when and where you became acquainted with him?

Answer. I do not know defendant, Coddington.

2d. Have you any interest in the event of this suit, or in the horses and mules in controversy therein, or had you at any time any interest therein?

42 Answer. I have no interest in the event of this suit, or the horses and mules in controversy, and never have had, directly or indirectly.

Deposition of William Hunter.

Int. 1st. What is your age, occupation, and residence?

Answer. My name is William Hunter; 30 years of age; reside at Little Rock, Ark.; clerk.

2d. Are you acquainted with the parties to this suit?

Answer. I am acquainted with the plaintiff only.

3d. Were you acquainted with Owny W. Barrett? Is said Barrett dead or alive? If dead, when & where did he die?

Answer. I was acquainted with Owny W. Barrett; he is dead, I understand; I do not know when or where he died.

4th. Do you know anything in relation to a partnership existing between said plaintiff & said O. W. Barrett? If yea, state when and where said partnership existed, and what was the business thereof? State also your means of knowledge.

43 Answer. I know of such a partnership existing. It existed at Little Rock and Duvall's Bluff, Ark., during the summer and fall of 1865. They were engaged in purchasing mules and horses at government sales of stock; I was employed by them as a general agent for the firm, and transacted a great deal of business for both of them, and was perfectly cognizant with their partnership as well as private affairs.

5th. Do you know of the purchase by plaintiff and the said Barrett of any horses and mules? If yea, state when, where, and of whom such purchases were made; the number respectively of said horses and mules; their value; whether they were purchased by said parties as partners; by whom the money for the same was paid; and how much was paid by each party?

Answer. I do know of such purchase. In the early part of September, 1865, I attended the auction sales of U. S. government property at Little Rock, by Capt. G. H. Dobyns, A. Q. M.; sometimes alone; sometimes with Richardson, the plaintiff, and Barrett, to assist in the selection of horses and mules for the firm. Sometimes I bid off what were purchased for them; sometimes Richardson, and sometimes Barrett did; I bid off for them, I should think, from thirty-five to forty head
44 of horses and mules; the value of which I should estimate at

from 80^{00} to 90^{00} per head for horses, and from 90^{00} to 100^{00} per head for mules. I cannot tell exactly the number purchased by Richardson and Barrett at this sale; to the best of my recollection there were purchased by them about (75) seventy-five mules and (65) sixty-five horses, and with very few exceptions this stock was struck off to Richardson, and the bills of sale were made out in his name; it was, however, perfectly understood that the stock was purchased for the partnership of Richardson and Barrett. I do not know by whom the money was paid of my own knowledge, or how much by either party.

6th. What brand, if any, was placed on said horses and mules?

Answer. The stock was branded with Richardson's brand—the letter R on the neck.

7th. What became of the said horses and mules? If any were taken by or sent to said O. W. Barrett, state how many, their value, where they were taken or sent to.

45 Answer. I should think more than half of the stock Barrett took north with him in September, 1865. The most of the remainder were shipped north in care of R. W. Crutsinger, in October, 1865, to O. W. Barrett, to Lincoln, Illinois. Their value was about the same as at the time they were purchased.

8th. Do you know if any of said horses and mules were afterwards in possession of the defendant? If so, state how many of each, where, & what was their value severally.

Answer. I know nothing of the matter inquired of in this 8th interrogatory.

9th. Do you know of any demand made by the plaintiff, or any one for him, on defendant for said horses or mules, or any of them? And if so, how many, and their value, and whether they were on such demand delivered to plaintiff or anyone for him.

Answer. I know nothing of the matters inquired of in this 9th interrogatory.

10th. Do you know any thing further of benefit to either party to this suit? If yea, state the same fully.

46 Answer. I can say further that the reason why the stock was bought in Richardson's name was, that Barrett who had been a quartermaster in the army, was not yet formally out of the service, and did not wish his name to appear as a purchaser. I never knew or heard of any one having any interest in the partnership of Richardson and Barrett, or the stock purchased by them, except themselves. If there had been, I think I should have known it, for I was familiar with all their business.

Cross-interrogatories:

1st. If you say that you are acquainted with defendant, Coddington, state when and where you became acquainted with him.

Answer. I do not know defendant, Coddington.

2d. Have you any interest in the event of this suit, or in the horses and mules in controversy therein, or had you at any time any interest therein?

Answer. I have no interest in the event of this suit, or the horses and mules in controversy therein, nor I never had any interest therein.

Deposition of Henry T. Noble.

47 Int. 1st. What is your age, residence, and occupation?

Answer. My name is Henry T. Noble; my age is thirty-six years; my residence, Dixon, Illinois; occupation, chief quartermaster of U. S. for department of Arkansas.

2d. Are you acquainted with the parties to this suit?

Answer. I know Lyman Richardson, the plaintiff. I don't know the defendant.

3d. Were you acquainted with Owny W. Barrett? Is said Barrett alive or dead? If dead, when and where did he die?

Answer. I was acquainted with Owny W. Barrett; I have been informed that he is dead, and that he died at Lincoln, Illinois.

4th. Do you know anything in relation to a partnership existing between said plaintiff & said O. W. Barrett? If yea, state when and where said partnership existed, and what was the business thereof. State also your means of knowledge.

Answer. I know nothing of the partnership, except by general reputation.

48 5th. Do you know of the purchase by plaintiff and the said Barrett of any horses and mules? If yea, state when, where, and of whom such purchases were made, the number respectively of said horses and mules; their value; whether they were purchased by said parties as partners; by whom the money was paid; and how much was paid by each party.

Answer. I saw Richardson & Barrett attending government sales; and saw them from time to time purchasing horses and mules during the fall of 1865, at Little Rock, Arkansas. I know that Barrett purchased two stallions of me about the 10th of September, 1865, and he informed me that Lyman Richardson, the plaintiff, would pay me for them 250^{00}, and said Richardson did pay me for them—said horses having been purchased by me at government sale. The said stallions were purchased in the name of Richardson & Barrett, and the bills of sale of them transferred by me to Richardson and Barrett.

6th. What brand, if any, was placed on said horses and mules?

Answer. At the time I transferred these horses, they were branded "U. S." on the shoulder, and "S" on the neck.

49 7th. What became of the said horses and mules? If any were taken by or sent to said O. W. Barrett, state how many, their value, where they were taken or sent to.

Answer. I know nothing of the matters inquired of in the seventh interrogatory.

8th. Do you know if any of said horses & mules were afterwards in possession of said defendant? If so, state how many of each, where, & what was their value severally.

Answer. I know nothing of the matters inquired of in the 8th interrogatory.

9th. Do you know of any demand made by plaintiff, or any one for him, on defendant for said horses and mules, or any of them; and, if so, how many, and their value, and whether they were on such demand delivered to plaintiff, or any one for him?

Answer. I know nothing of the matters inquired of in this interrogatory.

10th. Do you know anything further of benefit to either of the parties to this suit? If yea, state the same fully.

50 Answer. I know nothing further of benefit to either party.

Cross-interrogatories:

1st. If you say that your are acquainted with the defendant, Coddington, state when & where you became acquainted with him.

Answer. I don't know defendant, Coddington.

2d. Have you any interest in the event of this suit, or in the horses

and mules in controversy therein, or had you at any time any interest therein?

Answer. I have no interest in the event of this suit, or of the horses and mules in controversy, and never had any.

And the plaintiff further read in evidence the deposition of W. H. Howard, taken on the seventeenth day of May, A. D. 1866, before H. M. Post, special commissioner, (appointed for that purpose by commission duly issued out of said court,) at his office, in the city of St. Louis, in the State of Missouri.

Deposition of W. H. Howard.

51 Int. 1st. What is your age, residence, and occupation?

Ans. I am twenty-seven years of age; I live at New Orleans, La.; I am at present dealing in live stock.

Int. 2d. Are you acquainted with the parties to this suit?

Ans. Yes; with both of them.

Int. 3d. Were you acquainted with Owing W. Barrett? Is said Barrett alive or dead? If dead, when & where did he die?

Ans. I was acquainted with him; to the best of my belief he is dead; where and when he died, I do not know.

Int. 4th. Do you know anything in relation to a partnership existing between said plaintiff and said O. W. Barrett? If yea, state when & where said partnership existed, and what was the business thereof, and what was your means of knowledge.

Ans. A partnership between said parties existed at Little Rock, Arkansas, in the months of August and September, 1865; their
52 business was dealing in horses and mules. I was cashier of government auction sales at Little Rock at that time, and both parties had made payments to me on their joint account. Barrett informed me, in the presence of Richardson, when he (Barrett) was leaving Little Rock, that he was interested in whatever transactions Richardson might have with me in his absence, as well as if he were present. In keeping my accounts with them from day to day for my own satisfaction, I asked Barrett if he and Richardson were in partnership; he answered, "Yes, in purchasing those animals;" referring to those bought at said government sales. Most all of the stock purchased at these sales were borne upon the report of said sales made to the Quartermaster General as sold to L. Richardson, excepting only some two or four, not more than four animals, which Barrett informed me were bought on his own private account.

5th. Do you know of the purchase by plaintiff and said Barrett of any horses and mules? If yea, state when and where, and of whom said purchases were made; the number respectively of said horses and mules; their value; whether they were purchased by said parties as part-
53 ners; by whom the money for the same was paid; and how much was paid by each party.

Ans. I know of the purchases at the government sales mentioned in my last answer, and of no other purchases. As to the number or value, I can give no correct answer. The value, to the best of my recollection and belief, was from nine thousand to ten thousand dollars in all; and the purchases were made by said parties as partners, as before stated. To the best of my recollection, about three thousand dollars of this amount was paid by Richardson during the absence of Barrett, and the remainder by Barrett; said payments being understood to be made on partnership account, excepting the price of the two or four

animals above mentioned as purchased by Barrett on his own account, the purchase-money for which is included in the foregoing estimate of value.

6th. What brand, if any, was placed on said horses and mules?

Ans. To the best of my belief, they were branded with the letter R. I am not positive about it.

54 7th. What became of said horses and mules? If any were taken by or sent to O. W. Barrett, state how many, their value, and where they were taken or sent to.

Ans. Some were sent away by Barrett; some he took with him; and the rest Richardson sent to him. This is to the best of my knowledge and belief; I am not positive. All of them, I think, were disposed of in one of these ways.

8th. Do you know if any of said horses & mules were afterwards in possession of said defendant? If so, state how many of each, and what was their value severally.

Ans. I have no idea whatever whether they ever came into his possession or not.

9th. Do you know of any demand made by the plaintiff, or any one for him, on said defendant for said horses and mules, or any of them; and, if so, how many, and their value, and whether they were on such demand delivered to said plaintiff, or any one for him?

Ans. I do not know anything of such demand.

55 10th. Do you know anything further of benefit to either party to this suit? If yea, state the same fully.

Ans. I do not know of anything further of benefit to either party to this suit.

Cross-interrogatories:

1st. If you say that you are acquainted with the defendant, Coddington, state when and where you became acquainted with him.

Ans. I have had a slight acquaintance with him. I got acquainted with him at Little Rock, in August or September, 1865.

2d. Have you any interest in the event of this suit, or in the horses and mules in controversy therein, or had you at any time any interest therein?

Ans. None whatever.

The plaintiff, Lyman Richardson, was then produced, sworn, and examined in his own behalf, who testified as follows, to wit:

56 At the government sale of condemned stock at the cavalry depot near Duvall's Bluff, in Arkansas, in the month of July, A. D. 1865, I purchased a lot of horses—brand U. S. and I. C. Owing W. Barrett was government quartermaster, and made the sale; and after I had purchased the horses and paid for them, Owing W. Barrett, being soon afterwards mustered out of the service of the United States, bought of me and paid me for an interest of one-half of said horses. He rented a pasture on the Arkansas River, twelve miles below Little Rock, of Mr. Hicks, and sent the horses to it to pasture. Afterwards we agreed to purchase horses and mules on joint account at the government sale of stock to come off at Little Rock, Arkansas, commencing in the latter part of August, 1865. Before the sale commenced, I left Little Rock to go to Nebraska Territory, where I went and remained until on or about the sixth day of September, when I returned to Little Rock. Owing W. Barrett had purchased a number of horses & mules, and was buying more. The sales were still going on. The horses and mules purchased

at Little Rock were so purchased on partnership account, but bid off in the name of L. Richardson, the plaintiff, and the bills of sale made
57 out to him by the quartermaster, and branded with the letter "R." They were branded with U. S. on the shoulder and the letter "R"—said letter "R" being the brand of the plaintiff—on the neck. I left no money with Owing W. Barrett to purchase or pay for stock when I went away, but I had an arrangement with said Barrett that he should raise and advance what funds were necessary for the purchase of stock until my return; and when I returned I paid for the stock which was purchased at the sales after my arrival, including the day of my arrival, on the two last days at which we made any purchases. The amounts I so paid were in the aggregate nineteen hundred and sixty dollars. I paid the quartermaster's cashier on the day of my arrival $643; the next day I paid him $1,978; and for three horses bought at private sale, and turned in with the rest, I paid him $335; making in all $2,946. The bills of sale were made out in my name, and the letter "R" was my brand. I saw Samuel Coddington at Little Rock. I met him at the sale-yards or stables on the day I returned. He was working among the horses and mules. Barrett told me when I asked him what Coddington was doing there, or was there for, that he was down there
58 assisting in the purchase of the stock; that he had employed said Coddington to assist the said plaintiff and Barrett in the purchase of said stock; that he had been to California with a drove of mules, and knew a good deal about mules and horses. I don't recollect how long I remained where the sales were being made. I don't think it was a great while. I bid off one mule, but Wm. Hunter, agent of myself and Barrett, bid off, after my return, a large number of horses and mules in my name, and nearly all the balance, both before and after my return, were bid off by said Barrett in my name. I don't know who branded the mules and horses, and don't know who took them to the pasture, only as I have heard. All said horses and mules, when purchased, were taken to the farm hired by said plaintiff and Barrett, and there kept till shipped to St. Louis. We quit buying horses and mules on the 9th or 10th day of September, A. D. 1865; and on the 11th day of September, A. D. 1865, Owing W. Barrett & I made a settlement, and I paid him one-half the amount of the entire costs of all the stock, mules and horses, purchased at the government sales by him at
59 Little Rock; the entire cost of the mules and horses being about $8,165^{00}$, exclusive of expenses to date of settlement, and exclusive of $441, paid for five mules on the trip to St. Louis. The amount I then so settled with Barrett was about $4,000 00. Barrett left Little Rock to take the stock to Saint Louis for sale soon after our settlement, selecting indiscriminately from the stock bought at the cavalry depot and at Little Rock that which was in the best condition for sale at St. Louis. I gave him a draft on Maj. Mitchell, of St. Louis, for $1,500^{00}$, which he took and collected. Barrett wrote me that he had collected the draft, and he also collected of a man named Webb $500, in addition to the $1,500 which said Webb owed me. He also wrote me that he had purchased five more mules on board of the boat on his way to Saint Louis. The stock was shipped on board the Albert Peirce, at Duvall's Bluff, for St. Louis. The mules purchased on board the boat by Owing W. Barrett were purchased on partnership account. I owned one-half interest in them. I never saw the defendant until I met him in Lincoln, in December last. He claimed all the stock, horses and mules,
60 purchased by Owing W. Barrett at Little Rock, which were then in his possession. I think he stated there were fifty-two head of

horses and forty-eight head of the mules. Some two or three weeks after Owing W. Barrett left Little Rock, I shipped seventy-four head of horses and mules from the Hicks farm to him at St. Louis, being what remained of the lots left by Barrett, and purchased at cavalry depot and Little Rock. There were twenty-three head of mules in the lot, and the balance were horses. The mules were purchased at government sales at Little Rock, & were branded U. S. on the shoulder, and "R" on the neck, and were partnership mules. The horses were mostly, if not all, purchased at the sales at cavalry depot near Duvall's Bluff, and were branded U. S. & I. C. Out of all the mules and horses taken by Owing W. Barrett from Arkansas to Illinois, and shipped by me to him, all of which came into the possession of the defendant, Coddington, I got nine mules [mules] and fifty-three head of horses, the most worthless of the lot, and the horses being entirely of those purchased at cavalry depot. I shipped them, or they were shipped for me in December last at Lincoln, to Chicago, which I sold. I paid the freight upon them from Lincoln to Chicago, and back charges for keeping them,
61 and paid over half the nett proceeds, amounting to between 400^{00} and 500^{00}, to Mr. Knapp, (administrator of the estate of Owing W. Barrett.) He then produced to letters purporting to be from Owing W. Barrett to him, which were as follows, to wit:

"ST. LOUIS, *Sept. 26th, '65.*

"D'R CAPT.: Quite contrary to my expectations, when I wrote you on my arrival, I am still here, but leave to-morrow at 6 a. m. for Chicgo. I found mule market so dull—as I told you—I thought best to send everything to the country. I bo't Clark's five mules, $441, (just what they cost him at L. R. & fr't,) and Hemminway's horses. The horses have kept me. Webb said he owed you $500, which he p'd me. I told Webb I p'd $1,500 for horses, but paid $100 each horse. Shall probably clear $300. I am leaving 7 with Webb to sell. I expect sale is made for 4 @ $800. The gov't sales are interfering with sale of mules, though, I think, they will sell nothing very good. If so, will make this market good in week or two. Webb told me he could sell his lot at 120 ea., but found that $105 was all he could get offered. He thinks he has
62 made a sale, and intends to send Pender to-morrow for more, John says. I as I hope 90^{00} mules will bring here $130 to $150, within 2 weeks I will send 40 or 50 here from country, and telegraph you accordingly, when you can send up more—best of those you have on hand. I shall be ready to go to Louisville day after to morrow, if I find a letter from you requiring it on my arrival at Chicago. The stock will doubtless be through to-morrow. I will write again from Chicago.

"Resp'etf'y, &c.,

"BARRETT."

And offered to read them in evidence, to the reading of which letters, or either of them, the defendant, by his counsel, then & there objected. Whereupon the court permitted the letters to be read, subject to such objections and exceptions as might be urged against their admissibility, or taken to the ruling of the court in permitting them read.

He testified that the letters were in the handwriting of O. W. Barrett, and were received by him at Little Rock, through the mail. About the first of January, 1866, I saw defendant at Lincoln, where he resides, and demanded of him the horses and mules in his possession be-
63 longing to myself, and O. W. Barrett in his lifetime. I did not get them. He said that he had paid for them, and they were his.

Cross-examined:

Defendant, when I demanded the mules and horses of him, said that he had bought them and paid for them. I know that Barrett did not have any money of his own to pay for stock. He said he could get it of H. F. Lewis & Co., at Lincoln, Illinois. O. W. Barrett I had the understanding about purchasing horses & mules at government sales at Little Rock about the 10th, or from the 10th to the middle of August, 1865. I left immediately for Nebraska. I left for Nebraska between the 10th and 15th days of August, 1865. I left no money with Barrett to buy stock. He had none, but said he could get of H. F. Lewis & Co., as before stated. I asked him if he wanted or needed any money before I left to pay for stock. He said no; that he could get it of H. F. Lewis & Co., until my return. I am not confident that I returned to Little Rock from Nebraska on the 6th of Sept.; it might have been on the seventh. I was only out at the sales once after my return before they closed, and I think I bought one mule. Did not see any stock branded; did not see Coddington brand any horses and mules.
64 I don't recollect how many horses and mules were purchased on the two last days we bought at sales at Little Rock; but I know how much money was paid for them, for I paid it myself. I don't know what became of the bills of sale. Barrett took bills of sale with him. I don't know that Samuel Coddington received, branded, and took charge of the horses and mules in controversy, purchased at the government sales at Little Rock. I know that Sam. Coddington did not receive the stock; but A. J. Corley and other men, employed by myself and Barrett, assisted in taking care of them when bought, and in taking them down to the Hicks farm. Augustus J. Corley was in the employ of O. W. Barrett and myself. He and some one else came with the stock which Barrett brought up with him. O. W. Barrett and myself were concerned in a government beef contract at Little Rock. The contract was in my name, but Barrett got the contract; and there was another man concerned in it by the name of . The contract was obtained in my absence by Barrett. We were arranging about it the day I was out at the sale-stables, as before stated. Richardson also testified that he bought hay and oats at Little Rock, and sent to
65 steamer Albert Peirce, with Barrett, twelve bales of hay, at 75^{00}, and oats at 25^{00}. Richardson never heard of Coddington or M. W. Barrett, or any one else being interested in this stock.

The plaintiff here rested his case.

And the defendant, in order to maintain the issue on his behalf, first produced, and had sworn and examined as witness, John Sides, who testified as follows, to wit:

My name is John Sides; I reside at Lincoln, in Logan County; I was acquainted with Owing W. Barrett in his lifetime; I knew him when he was quartermaster of 106 regiment Ill's volunteers infantry. I belonged to that regiment, and was with O. W. Barrett in his department for two years; I was detailed from my company for that purpose. I saw him at Lincoln a short time before he died; he died at Lincoln on the 28th day of October last; I met him in Lincoln a few days before he died, and he applied to me to procure him pasture, if I could, on Sugar Creek, in Logan County, for his horses, where he could get feed for them. He said he had about seventy or eighty head of horses. I asked
66 him if he did not have more than that number. He said no; that he and his partner had about seventy or eighty head of

horses, and that the balance, about 100 head, belonged to Coddington and Mark Barrett. I went to get a pasture for him, but before I could do so he died.

The defendant next produced, and had sworn and examined in his behalf, Edward Hurlburt, who, after being first sworn and interrogated, testified as follows, to wit:

My name is Edward Hurlburt; I reside at Lincoln, Illinois; I am now and for several years last past have been local agent at Lincoln, Illinois, of the United States Express Company. I am acquainted with the firm of H. F. Lewis & Co., at Lincoln, and the defendant. The draft here shown me, dated Little Rock, Ark., July 29th, 1865, for sixteen hundred and five & $\frac{67}{100}$ dollars, payable five days after sight, drawn by O. W. Barrett in favor of John Swasey & Co., on H. F. Lewis & Co., at Lincoln, Illinois, came to the office for collection on the 8th day of August, 1865, and was paid by Mark W. Barrett on the 11th day of August, 1865. And the draft for one thousand and twenty-five
67 dollars, dated Little Rock, Ark., Sept. 1st, 1865, payable at sight, drawn by O. W. Barrett in favor of Balt & Volmer, on H. F. Lewis & Co., at Lincoln, Illinois, now shown me, was paid by the defendant, James Coddington, on the 9th day of Sept., 1865. When the draft come for collection, I notified George D. Boyden, of the firm of H. F. Lewis & Co., who informed me that defendant would pay it, and he called and done so. And defendant paid draft for seven hundred dollars, made at St. Louis, Mo., dated Sept. 20th, 1865, drawn by O. W. Barrett in favor of Peter A. Feldman, on H. F. Lewis & Co., at Lincoln, & indorsed by him as clerk of steamer Albert Pierce to U. S. Express Company for collection.

The defendant then offered and read in evidence the above-described drafts.

"$1,605^{67}. LITTLE ROCK, ARK., *July 29th*, 1865.

"Five days after sight pay to the order of John Swasey & Co. sixteen hundred & five & $\frac{67}{100}$ dollars, value received, and charge the same to account of

O. W. BARRETT.

To H. F. LEWIS & Co., *Lincoln, Ill's.*"

[Stamp $1 00.]

(Indorsed:) Pay to order of the United States Express Co.

JNO. SWASEY & CO.

(Also:) Payed Aug. 11, '65.

HURLBURT & BRO.,
Agt's U. S. Ex. Co.

68 "$1,025^{00}. LITTLE ROCK, ARK., *Sept. 1st*, 1865.

At sight pay to the order of Bolt & Volmer ten hundred and twenty-five dollars, value received, and charge the same to account of

O. W. BARRETT.

"To H. F. LEWIS & Co., *Lincoln, Illinois.*"

[Stamp.]

(Indorsed:) Pay to the order United States Express Co.

BOLT & VOLMER.

"700^{00}. ST. LOUIS, MO., *Sept. 20th*, 1865.

At sight pay to the order of Peter A. Felman seven hundred dollars, & charge to the account of O. W. BARRETT.

"To H. F. LEWIS & Co., *Lincoln, Ill's.*"

[Stamp.]

(Indorsed:) PETER A. FELDMAN,
Cl'k St'r Albert Pearce.

(Also:) Pay U. S. Express Co. for collection.
BARTON ABLE & Co.

The defendant then produced, had sworn, and examined in his behalf N. P. Harrison, who, after having first been duly sworn & interrogated, testified as follows, to wit:

I was acquainted with O. W. Barrett in his lifetime. I knew him and clerked for him when he was quartermaster of the 106 regiment Illinois volunteers, at Duvall's Bluff, Arkansas, and went with him from
69 there to Little Rock, Ark., after he made his sales of condemned stock at Duvall's Bluff, and assisted him in settling up his government accounts. I was with him before and when he made his sales at Duvall's Bluff, and went with him to and remained at Little Rock till the 8th day of September, A. D. 1865. I know on what day the plaintiff returned from Nebraska to Little Rock; it was on the 8th day of September, A. D. 1865. I am confident about the day; he came on the boat in the morning, and I left there on the same boat on the evening of the same day, and it was the 8th day of September, A. D. 1865. I am acquainted with both the plaintiff and defendant to this suit. I was head clerk in Barrett's office; saw plaintiff about there frequently, but never knew or heard of him and O. W. Barrett being interested as partners, jointly or otherwise, in the purchase of horses and mules or horses or mules. I know that they had some understanding about a government beef contract. The contract was offered to be let. It was advertised, and O. W. Barrett first made a bid for it in his own name, and the contract was not let at that time, but all the bids were rejected. Then O. W. Barrett put in a bid in the name of Lyman Richard-
70 son, and the contract was awarded to him. The draft for 384^{00} here shown me, dated Little Rock, Sept. 6th, 186 , was drawn in my favor by O. W. Barrett on M. W. Barrett, on the 6th day of Sept., 1865, being two days before I left Little Rock, and M. W. Barrett paid it to me.

Cross-examined:

I am quite certain, and don't think I can be mistaken about the day or time when plaintiff returned from Nebraska to Little Rock. It was certainly on the day I have stated. I know about the beef contract, and how the bills were made, by my connection with it; I made out the bids and application. Barrett did not it, because (as I at the time understood him) his accounts were not fully settled with the government. The bid made out by me in Richardson's name, and on which the contract was awarded, was higher by a cent and a half a pound than the one put in for Barrett in his own name; I don't know, only the contract was given to Richardson.

The defendant, James Coddington, was then next introduced
71 as a witness in [in] behalf of himself, who, after having been first duly sworn and interrogated, testified as follows, to wit:

My name is James Coddington. I am the defendant to this suit. I reside at Lincoln, Illinois. Some time about the last of July, or the first of August of last year, Mark W. Barrett, who is my son-in-law, and resides at Lincoln, informed me that he had made arrangements with his brother Owing W. Barrett, to purchase about five thousand dollars' worth of horses and mules at government sales soon to come off at Little Rock, Arkansas, if he could arrange with some one to get the money to pay for them. He said that he could not spare the money out of his business to buy them alone, and requested me to go into the speculation with him. I consented to do so, but did not then entirely complete the arrangement. I was about purchasing some land, and deferred completing any final arrangement with him until I could see further about my proposed land trade; and told him if he could, in the meantime, get some one else to go in with him at Lincoln, to do so. My land trade soon after failed, or I rather concluded not to go into it, and then informed Mark W. Barrett that I was ready to go into the pur-
72 chase of such stock with him if I could made any arrangements to borrow the money, or get the use of it for a short time, until my money came from California, where Mr. Dustin and myself had taken some mules which had been sold. I went to Dustin, of the firm of Dustin & Musick, bankers, at Lincoln, and informed him of the proposed arrangement, and applied to him for the use of the requisite amount of funds, who informed me that I could get what money I wanted; that they would let me have it. I then told Mark W. Barrett that I did not wish or like to trust to the judgment of everybody in purchasing the amount of stock, and that as I was going into it, I preferred sending Samuel Coddington, my brother, down there to select the stock and take charge of and bring home that purchased, to which he consented. I gave my brother, Samuel Coddington, directions about the purchase of the stock, which was not to purchase any condemned stock or any horses over eight years old, nor any small mules, and to purchase to the amount of from $6,000 to $8,000 worth, and started him with a letter written by Mark W. Barrett to Little Rock. He left Lincoln for Little Rock on the 20th day of August, A. D. 1865. The horses and
73 mules were to be selected and purchased under the superintendence and direction of Samuel Coddington for us, with such aid as O. W. Barrett could give him; and O. W. Barrett was to draw on H. F. Lewis & Co., at Lincoln, Ill's, for the purchase-money; and Samuel Coddington was to take charge of, care for, and bring the stock purchased to Illinois for us. Shortly after my brother left for Arkansas the drafts begin to come on for payment. The first draft came to the United States Express Company. It was for one thousand and twenty-five dollars, and is the same described by witness, Edward Hurlburt. I was notified that it was at the express office by George D. Boyden, of the firm of H. F. Lewis & Co. I went & paid the draft, and took it up. I had before its arrival informed Mr. Boyden of the arrangement, and that I would meet the drafts. The next draft I paid was one for $500 00, dated Little Rock, Ark., Aug. 24th, 1865, drawn by O. W. Barrett on H. F. Lewis & Co., in favor of W. S. Oliver, indorsed and sent for collection to Dustin & Musick's bank. I paid to Mr. Dustin at the bank. The next draft, bearing date Aug. 25th, drawn at Little Rock, was for $500^{00}, by O. W. Barrett on H. F. Lewis & Co., in favor of
74 A. Boyd & Co., and indorsed and sent to Dustin & Musick for collection. I paid to Mr. Dustin. The next draft was for 500^{00}, bears date Aug. 29th, 1865, and was drawn on H. F. Lewis & Co., in favor of W. S. Oliver by O. W. Barrett, and indorsed and sent to

Dustin & Musick, at Lincoln, for collection, which I paid to Dustin. The next draft which come was for 600^{00}, drawn by O. W. Barrett on H. F. Lewis & Co., in favor of M. H. Fowler, (dated Little Rock, Ark., Sept. 2d, 1865,) indorsed and sent to Dustin & Musick for collection. I paid this draft off to Dustin. The next draft I paid was for the sum of 500^{00}, drawn by O. W. Barrett on H. F. Lewis & Co., in favor of Messrs. Ticknor & Co., dated Sept. 2d, 1865, endorsed and sent to Dustin & Musick for collection. I paid this draft to Mr. Dustin. The next draft bears date Sept. the 8th, 1865, was for fifteen hundred dollars, drawn by O. W. Barrett in favor of M. S. Mepham & Bro., on H. F. Lewis & Co., and indorsed and sent to Dustin & Musick for collection, which I paid to Mr. Dustin. The last draft was drawn on H. F. Lewis & Co. by O. W. Barrett, at St. Louis, Mo., Sept. 20th, 1865, for seven hundred dollars, in favor of Peter Feldman, clerk of the steamer Albert Pearce, which was indorsed and sent to the United States
75 Express Company at Lincoln for collection, which I paid to Mr. Edward Hurlburt, express agent at Lincoln, as testified to by him. I thus paid on drafts drawn by O. W. Barrett the sum of sixty-three hundred and twenty-five dollars as purchase-money on the horses and mules I am here sued for. Witness here produced and read in evidence the drafts referred to. I paid as expenses to Samuel Coddington two hundred and fifteen dollars on account of said stock before it reached home. Mark W. Barrett is and was my partner in the stock. I furnished the most of the money, but he was to account to me for it, and was and is interested in it and the proceeds of it as much as I am. We both bought and sold the property together. Beside what I paid he paid one draft of $1,605\frac{67}{100}$, described by the witness Hurlburt, and one draft drawn by O. W. Barrett on him in favor of N. P. Harrison for 384^{00}. When the stock arrived at St. Louis, I sent my son Charles E. Coddington, to have it shipped to Lincoln in cars, but the stock, as I was afterwards informed, was too weak and in too bad a condition to be shipped, and was taken to pasture and rested and recruited and
76 then driven home. The stock was brought to Lincoln and delivered to me and Mark W. Barrett by my brother (Samuel Coddington) the last of September, 1865. I did not know that O. W. Barrett was bringing any stock to Lincoln until my son Charles E. Coddington returned home from Saint Louis and informed me that O. W. Barrett had brought some horses to St. Louis for sale but could not find sale for them, and that he had got him to have them brought to Lincoln with our horses and mules, and they were so brought. I think there were about twenty-five head of his stock (horses) which were brought to Lincoln with Mark Barrett's & my horses and mules. At that time there were delivered to us fifty-one head of horses and forty-four mules, as ours. We afterwards got three mules more, which we learned had been lost, and one horse. My brother informed me that he sold one mule on his way from St. Louis to Lincoln for one hundred and seventy-five dollars. I had got pasture for my stock before they reached home, and turned them and the "I C" stock, which I was informed was O. W. Barrett's, into it. Two of the first lot they brought with my stock died in a day or so after reaching there; then O. W. Barrett, in a short
77 time afterwards, brought or sent ten more horses here from St. Louis, which were all turned in with mine by me, or with my permission. O. W. Barrett told me before they arrived here that they were on the way. I took care of, and fed, pastured, and otherwise attended to all the horses and mules I have mentioned until O. W. Barrett's death, which occurred on the 28th day of October last. After the stock arrived

at St. Louis, and before they reached home, (probably a day or two before,) O. W. Barrett come to Lincoln on the one o'clock p. m. train from St. Louis to Chicago, and stopped at my house, where I saw him the same evening; he was in bed at my house with a chill on him; he remained there until the chill left him, when he got up, went up town, and took a freight train to Atlanta. He did not return to Lincoln for at least ten days, when he returned to Lincoln, and remained a few hours and left again. I think he was at Lincoln a short time afterwards, but did not remain long. The next time I saw him was on Friday, the day before he died; in the meantime, after the stock had reached there and before he come there, (the day before he died,) I had spoken several times to Mark W. Barrett to have his brother take his stock from among ours, which
78 he informed me, from time to time, his brother had promised to do, and had been endeavoring to get pasture for that purpose. On the evening before he died I spoke to O. W. Barrett myself about separating our stock, and told him the stock would do better if separate; that his would do better to themselves, and so would ours, and that it would be better for both parties, and that I desired to have our matters settled up. He said he would get pasture and take his stock to it as soon as he could; that he had been endeavoring to obtain pasture and feed at or near Atlanta, and had men endeavoring to do so for him, but that pasture was hard to get, and that corn was so high that it was a difficult matter to make the necessary arrangement, but he was still endeavoring to make suitable provisions for taking care of his stock. He then proposed to me to take the Forbes pasture I had hired, which I finally agreed to let him have. He was to remove his stock immediately, by the first of the ensuing week, and we were then to settle our matters all up. He died the next day, and so soon as his remains were sent away, or in a day or so afterwards, we took out all his stock from ours,
79 and put it in the Forbes pasture, which I had agreed to let him have. The day before he died there were fifty-seven more of "I. C." horses reached Lincoln, which, as I understood, were sent him, O. W. Barrett, from Arkansas, and which were turned into a pasture by themselves; they were turned into Dunivan's pasture, near Lincoln; three of them died while in that pasture. We also put them in the Forbes pasture, so that all his stock were put together, where his own hands afterwards took care of them, but Mark W. Barrett and I bought corn for them. After O. W. Barrett died, we learned that Mr. Richardson, or some one else down there, had some interest in the stock which O. W. Barrett claimed, and immediately wrote to Mr. Richardson at Little Rock, about Barrett's death and the stock, and requested him to come and see to it; but we got no reply, nor did we hear anything from him or any one else, until, in the latter part of December last, Richardson came to Lincoln, & claimed a half interest in all the stock—both stock that O. W. Barrett claimed, and the stock which belonged to us. He immediately left for Chicago, and shortly afterwards returned
80 and brought with him Mr. Knapp, the administrator of the estate of O. W. Barrett, and Mr. Knapp's son. All the horses & mules which were in the Forbes pasture, and was claimed by O. W. Barrett, were taken by them and shipped to Chicago. This was all the stock brought here from St. Louis or Arkansas, excepting the forty-eight mules and fifty-two horses claimed by Mark W. Barrett and myself; the rest having died of disease.

Cross-examined:

The horses and mules which were bought for Mark W. Barrett and

myself, and paid for by us were ours and we got no others. I sent my brother Samuel Coddington to Little Rock to select and superintend the buying of the stock, and to take charge of it and bring it home with him. I expected that O. W. Barrett would aid him and assist him in the purchase of it. I expected that he would assist in the purchase of the horses and mules selected by me brother, and draw the drafts and pay for it. I did not expect or authorize the purchase of any stock by O. W. Barrett, except such as my brother might select or assent
81 to; and I considered the stock, when so bought and paid for, mine. We took into calculation all the money paid by Mark W. Barrett and myself; he was to account to me for one-half the money, or the difference between what he paid and one-half the cost and expenses, with 10 per cent. interest on it until we made sales of the stock. We paid with the amount above stated. I don't know how much we sold the horses and mules for. We sold them in different lots and pairs and single, and traded a great many of them for other property and city lots and improvements. I had three horses before we purchased the horses and mules in controversy, and have one of them yet. I did not sell the horses and mules in controversy for seventeen thousand dollars, nor sixteen thousand, nor fourteen thousand; they may have brought, in trade and money, thirteen thousand dollars. I never told Thomas J. Lovison that I had sold, during the last winter and spring, seventeen thousand dollars' worth of horses and mules. I could not state, without time and calculation, how much the stock in controversy was sold for, and could only then approximate to the value of property we exchanged a great deal of it for. I know it did not bring, and would not have brought, over thirteen thousand dollars. I don't know, without reference to my
82 books, what the expenses of taking care of & feeding it amounted to. I don't know that it amounts to more than any particular sum, but I can safely say that I would be glad to give any one two thousand dollars to pay such expenses. O. W. Barrett and I had no division of property to make. I mean by seperating the stock, that he would take his stock from among mine; and by having a settlement of our matters, that he would make out his account for his expenses and trouble, and we would make ours of money paid out, and for feed and pasture and expenses incurred, and have the matter settled between us. It was not understood that he or any one else, excepting Mark W. Barrett and myself, had any interest in the horses & mules I am here sued for, and they had not. I received the horses and mules my brother brought me; he assisted us in seperating them from the horses O. W. Barrett claimed, and the plaintiff and O. W. Barrett's administrator got. I think that, in all, both of mules and horses, which were brought to Illinois, claimed by O. W. Barrett, about thirty head died. They mostly all "I. C." stock. The mules were small mules, and I don't know, only as I have been told, where they were brought.

83 The defendant then next introduced, as a witness in his behalf, Mark W. Barrett, who, after first having been sworn in due form of law and examined, testified as follows, to wit:

My name is Mark W. Barrett. I reside at Lincoln, Logan County, Illinois; and am one of the firm of H. F. Lewis & Co. there. The witness George D. Boyden and myself conduct the business of the firm at Lincoln. I knew Owing W. Barrett in his lifetime. He was my brother. He never borrowed, or made arrangements to borrow, money of the firm of H. F. Lewis & Co., nor of me to purchase horses and mules at government sales at Duvall's Bluff, Little Rock, or else-

where, in the summer and fall of 1865, or at any other time. I have seen and examined all the drafts here exhibited and described. They were signed by O. W. Barrett, and all but those mentioned by him as being paid by me, were paid by James Coddington. I paid the first draft for $1,605^{67}$, dated July 29th, 1865; and the one dated Sept. 6th, 1865, drawn by my brother on me for 384^{00}, in favor of N. P. Harrisson. I left Lincoln, Illinois, in the latter part of Dec., 1864, for Duvall's Bluff, Ark., where my brother was acting as government quar-
84 termaster, and remained there until the latter part of the May following, when I returned home to Lincoln, where I have been ever since. Before leaving Duvall's Bluff, I made arrangements with my brother O. W. Barrett to purchase good horses and mules at subsequent government sales of stock expected to come off at Little Rock or, it might be, elsewhere. I was to furnish the money to pay for them, and he was to purchase them for me and send them to me at Lincoln, or where I might afterwards direct. He was to draw on H. F. Lewis & Co., at Lincoln, for the money to pay for such purchases, and I was to have the drafts paid, and the stock thus bought and paid for were to be mine, or mine and any one else who might go in with me; for I told him I did not have the money myself to spare out of my business, but that I knew I could get it of some one, and would probably take in a partner. With this arrangement and understanding I come home. We corresponded on the subject. I don't now recollect how many letters were passed between us, and can only find one written by my brother to me. This letter here shown me is the letter I allude to; it is in my
85 brother's handwriting, and bears date the same as it did when received by me. The defendant, by his counsel, then offered the letter and all the drafts in evidence, which were respectively read with the reserved objections and exceptions of plaintiff, by his counsel, to their introduction.

Said letter and the seven drafts not already heretofore copied herein, and above referred to, are in the words and figures following, to wit:

"LITTLE ROCK, *August* 10, 1865.

"D'R BRO. M. W.: I have established my office here for purpose of closing up my official business, and to look about to see if there is anything for me to take hold of hereafter. It will require about this month to close up. I shall then go north, but doubtless return here after a short stay. I am making arrangements about buying horses at the sale here, when they sell good ones. There will be sold 1,000 artillery horses, to commence about 22d inst., I think. If they go for what I think they will, I shall buy all I can get. The home demand is getting supplied with the condemned stock now being sold, of which I want none.
86 The artillery horses, as far as I have seen, are good draft horses, and probably will sell in Illinois and in Mo. at $100 to $150. They can be shipped from Duvall's Bluff at $7 or $8 per head to St. Louis, and I think will be sold here at 60 maximum average. What I buy and draw on you for will be for you, and as I now understand you, you would like about $5,000 worth, if can be bo't at what I consider cheap. Those already purchased are running in good pasture at a cost of about $1 00 per mo. ea., including herders. They are said to be doing first-rate. I have not seen them.

If I hear nothing from you before sale of these horses, indicating a change in your purpose, and they go at prices that suit, I shall buy and draw on H. F. Lewis & Co., Lincoln, (except otherwise directed before,)

at sight, and telegraph you from here, except I know it will be held over here one boat, when I can advise you by letter. Horses already purchased are condemned stock, and you can have an interest, if you want, to the am't I owe you, but if you do not I will pay it in next purchase. You can have ¼ int., if you desire, but con'd stock is not
87 as safe or good. I hope to hear from you again before sale. I had a letter from Florence, telling me of Thedie's arrival, and that she was sick. I hope you will attend to her while I am away, before she goes to Chicago. Make my love to Anna, and remember me to Rosenthalls & all old friends.

"Aff'y, ORLANDO."

"500^{00}. LITTLE ROCK, ARK., *Aug.* 24, 1865.

"At sight pay to the order of W. S. Oliver five hundred dollars, value received, and charge the same to account of

"O. W. BARRETT.

"To H. F. LEWIS & Co., *Lincoln, Ill's.*"

[Stamp.]

(Indorsed:) W. S. Oliver. (Also) M. S. Mepham & Bro. (Also) Pay Dustin & Musick or order.

N. J. FAIRCHILD, *A. Cas.*

"500^{00}. LITTLE ROCK, ARK., *Aug.* 25, 1865.

"At sight pay to the order of A. Boyd & Co. five hundred dollars, value received, and charge the same to account of

"O. W. BARRETT.

"To H. F. LEWIS & Co., *Lincoln, Ill's.*"

[Stamp.]

(Indorsed:) A. Boyd & Co. (Also) D. A. January & Co. (Also) Pay N. H. Ridgeley & Co. or order.

JAMES E. VEATMAN, *Cash'r.*

88 (Also) Dustin & Musick or order for collection.

N. H. RIDGLEY & CO.

"500^{00}. LITTLE ROCK, ARK, *Aug.* 29, 1865.

"At sight pay to the order of W. S. Oliver five hundred dollars, value received, and charge the same to account of

"O. W. BARRETT.

"To H. F. LEWIS & Co., *Lincoln, Ill's.*"

[Stamp.]

(Indorsed:) Pay to the order of st'r Glias No. 3.

GEO. N. BAKER, *Clerk.*

(Also) W. S. Oliver. (Also) Pay to the order of F. M. Vinson. Geo. H. Baker. (Also) Pay to the order of Asa Hatch. F. W. Vinson. (Also) Pay Thos. A. Stoddard or order. Asa Hatch. (Also) Pay Geo. A. Black, esq., c'r, or order, for collection account of Third National Bank of St. Louis.

J. H. BUTTON, *Pres'd't.*

(Also) Pay to the order of Dustin & Musick collection account First National Bank, Springfield, Ill.

FRANK W. TRACY, *A. Cas.*

[Stamp.]

"600^{00}. LITTLE ROCK, ARK., *Sept.* 2*d*, 1865.

"At sight pay to the order of M. H. Fowler six hundred dollars, value received, and charge the same to account of

"O. W. BARRETT.

"To H. F. LEWIS & Co., *Lincoln, Ill's.*"

[Stamp.]

89 (Indorsed:) M. H. Fowler. (Also) Fowler & Co. (Also) G. W. Ball & Co. (Also) Pay N. H. Ridgely & Co. or order.

A. COHILN, *Cash'r.*

(Also) Pay Mess. Dustin & Musick or order for collection.

N. H. RIDGELY & CO.

"500^{00}. LITTLE ROCK, ARK, *Sept.* 2*d*, 1865.

"At sight pay to the order of Messrs. Ticknor & Co., St. Louis, Mo., five hundred dollars, value received, and charge the same to account of

"O. W. BARRETT.

"To H. F. LEWIS & Co., *Lincoln, Ill's.*"

[Stamp.]

(Indorsed:) Ticknor & Co. (Also) Pay to Dustin & Musick or order.

N. J. FAIRCHILD, *A. Cas.*

"$1,500^{00}$. LITTLE ROCK, ARK., *Sept.* 8*th*, 1865.

"At sight pay to the order of M. S. Mepham & Bro. fifteen hundred dollars, value received, and charge the same to account of

"O. W. BARRETT.

"To H. F. LEWIS & Co., *Lincoln, Ill's.*"

[Stamp.]

(Indorsed:) M. S. Mepham & Bro. (Also) Pay Dustin & Musick or order.

N. J. FAIRCHILD, *A. Cas.*

"384^{00}. LITTLE ROCK, ARK., *Sept.* 6, 186 .

90 "At sight pay to the order of N. P. Harrison three hundred and eighty-four dollars, value received, and charge the same to account of

"O. W. BARRETT.

"To M. W. BARRETT, *Lincoln, Ill's.*"

[Stamp.]

(Indorsed:) N. P. HARRISON.

My brother O. W. Barrett was to draw on H. F. Lewis & Co. for money at any time there seemed to be or was an opportunity offered for buying such stock as I wanted, and the draft for $1,605^{67}$, before spoken of, was drawn in pursuance of that arrangement. Shortly after I come home, and before the $1,605^{67}$ draft was drawn, I mentioned and fully explained the matter to Mr. Coddington, when he signified his willingness to become a party to the arrangement with me, and he soon after did so. He then, as I think, in the latter part of July—not later than that, I am sure—made an arrangement with me by which he was to raise

the most of the means to meet the drafts, and we were to become equal partners in the purchase of stock, under my control or agreement with my brother; but he was about purchasing some land, and rather deferred furnishing the money at that time, and said that if before he got
91 ready to do so, or anything happened that he did not do so, I might get some one else to go in with me in his stead. Matters thus stood until I received the letter just read, from my brother, which I showed him, when he concluded to at once send his brother Samuel Coddington down to Little Rock to select and assist in the purchase of stock for us, and to take charge of our stock when purchased, and bring it up home. We sent Samuel Coddington down to Little Rock. I think he started from Lincoln about the 20th day of August, A. D. 1865. Directly after he started for Little Rock, the drafts begin to come, and were paid off by Mr. Coddington, the defendant, as stated by him. The draft for $1,605^{67}$, before testified about as paid by me, was drawn in pursuance of the arrangement between my brother and me, by which he was to purchase horses and mules for me, or for me and any one else who might be or become interested with me, and was so received and regarded by my brother and Mr. Coddington and myself. The draft for 384^{00}, drawn by O. W. Barrett on me, in favor of N. P. Harrison, was also drawn for the purpose of paying for horses and mules purchased by him (O. W. Barrett) for us.

92 Samuel Coddington returned to Lincoln about the last of September, A. D. 1865, with mules and horses purchased for us at Little Rock by him and my brother O. W. Barrett. I don't remember the exact number as then informed he brought us. I was not present when they were delivered to Mr. James Coddington, in whose possession they were when I first saw them. I don't now recollect when I first saw my brother after we had sent for the stock, but I think it was before the time or about the time (as I am informed) the stock reached Lincoln. I was in Chicago, as I think, and met him there. He informed me about what number of horses and mules they had bought for us; that the stock all looked hard, but would recruit up, and that Samuel Coddington knew all about the prices or cost of them. The defendant was anxious to have my brother remove or take away his stock from among ours, and requested me to urge him to do so. I did speak to my brother about it more than once, and he promised to take his stock away; yet he said that he had rather let them remain with ours, from the reason that they would not be as well taken care of by any one else, and would not do as well.

93 I know that my brother was endeavoring to get pasture and feed for his horses before he died, and I was present and heard the conversation and arrangement by and between him and Mr. James Coddington, as testified to by Mr. Coddington, on the evening before my brother died, and know that Coddington states the facts as they transpired; and the other matters, as regards the seperation of the stock, and putting that claimed by my brother to pasture afterwards, and the purchasing of corn to feed it, as sworn to by Mr. Coddington, I know to be true.

On being cross-examined, the witness, Mark W. Barrett, testified as follows, to wit:

I cannot state the precise time I made the arrangement with my brother to purchase horses and mules for me. We had a number of conversations about it, and the arrangement was definitely made before I left Duvall's Bluff in May, 1865, for home. I think he wrote another letter to me after I left there before he wrote the one read in evidence; but I would not even be sure of that. If he did, I have lost it, and can't

find it, after careful and diligent search made by me in all places
94 where I would most likely have put or loged it away. If he wrote any other letter to me, or if I wrote to him, I know there was nothing in either or any such letter or letters at all changing or modifying our arrangement for the purchase of horses and mules. I know that the letter read in evidence is expressive of the terms of our agreement about the purchase of stock. The arrangement was a verbal one, and was well and definitely understood by both of us. There was not anything said about my paying him for his services rendered in the transaction. Of course, I expected to pay him and make it satisfactory to him. I did not expect him to work or do business for me for nothing. He had none and was not to have any interest whatever in the stock in controversy here in this suit. I was in no way a partner or interested with him. I do not owe my brother anything, or, rather, his estate anything. I presume, and in fact I know the administrator of my brother's estate holds a note in favor of my brother on me, but that note is paid, and I hold a receipt against it. I did not and do not know that
95 my brother and the plaintiff were partners. I never heard that they were until I heard Mr. Richardson say so in December last.

The defendant then next introduced, as a witness, Samuel Coddington, who, after first having been duly sworn and interrogated, testified as follows, to wit:

My name is Samuel Coddington; I reside in Logan County, Illinois I am acquainted with the plaintiff a little; was introduced to him by the late O. W. Barrett, at the government sale-stables, near Little Rock, Arkansas, on the 8th day of September, A. D. 1865. I know the defendant well; he is my brother; I suppose that I know what this suit is about; it is about some horses and mules, if I understand it right, which were purchased for my brother James Coddington and Mark W. Barrett by O. W. Barrett & myself, at the government sale of stock at the government sale-stables near Little Rock, Arkansas, in the months of August and September of the year 1865. The defendant and Mark W. Barrett got me to go there in August, 1865, to select horses and mules, and assist or direct in their purchase at government sales, and take charge of and bring home the stock so purchased for them.
96 Before starting from home the defendant and Mark W. Barrett instructed me not to purchase any small mules, condemned stock, or horses over eight years old, and sent the same instructions by me to O. W. Barrett; give me a letter of introduction to him, which I heard read and saw myself, in which the same instructions were repeated to him. I give the letter to him and he read it. I repeated my verbal instructions to him, which were to govern both of us in the purchase of stock. I left Lincoln, Illinois, on or about the 20th day of Sept., A. D. 1865, and reached Duvall's Bluff, Arkansas, on or about the 26th of the same month; it may have been the 27th of the month when I got there. I met O. W. Barrett at Duvall's Bluff on my arrival there. He informed me that were some eighty head of horses for sale by private individuals there and that they were about ten miles distant, and for me to go and see them, and they and the price suited he would buy them for me. I went and saw the horses and did not like them; they were too old; so I returned to Barrett and told him they did not suit. We soon started for Little Rock, which place we reached the same evening. When
97 I went to Mr. Barrett and made my business known to him, he asked me if I brought the money along with me to pay for the purchases desined; I told him I had not, and informed him that the

purchases were to be made under the arrangement between him and Mark W. Barrett, to the amount of from $6,000 00 to $8,000 00 dollars, if the stock and prices suited; and that he was to draw on H. F. Lewis & Co., at Lincoln, Illinois, for the money to pay for the stock purchased. He said it was all right, but it would probably have been better it they had sent the money down, from the reason that money was rather scarce about Little Rock at that time. When we reached Little Rock that evening, Barrett and I went around among the merchants there, and he requested them to save all the money they could for him, for which, he said he would give them drafts payable at sight on H. F. Lewis & Co., at Lincoln, Illinois, which they could use in St. Louis or elsewhere, and informed them what he wished to use the money for, and got the promise of money in that way. I saw some of the drafts drawn by O. W. Barrett, and in his possession, in favor of some of the merchants referred to, and soon afterwards saw him have money, which he
98 said he got on the same drafts; they are some of the same drafts read in evidence on this trial. Plaintiff was not at Little Rock when I went there, and did not reach there until the morning of the 8th day of September thereafter. Barrett had, as he said, already bought some 23 head of mules and two horses at the government sales near Little Rock, before I got there, for his brother Mark W. Barrett, but upon inspection of the horses and mules purchased by him, I was not willing to receive but three of the mules, from the reason that they were too small, and did not fully come up to my instructions. The horses I took. Barrett said, We will sell the mules and account to your brother and Mark Barrett for them. We then commenced buying horses and mules. I selected the stock and told O. W. Barrett on which horses and mules to bid and how much to bid for them, and he bid them off accordingly. The stock was bought and struck off in the name of O. W. Barrett. When we commenced buying, Barrett said that I ought to brand the horses and mules as fast as purchased, or I might lose some of them, or have trouble about them. I told him I had no brand and did not know where to get one. He said, We have
99 a brand here that we use; it is the letter "R," and you can use it if you want to. I then went and found such a brand, and as fast as horses and mules were struck off to us branded them on the neck with it; I done the branding myself with it; took charge of all the horses and mules so purchased, and branded them, and sent them to pasture; I got permission of O. W. Barrett to turn the horses and mules purchased for defendant and Mark W. Barrett into a pasture he had his horses in, about twelve miles below Little Rock, on the Arkansas River, until we got through buying, and I got ready to start home with them; the arrangement about buying, paying for, and keeping horses and mules, when we first commenced buying, was to pay for the purchases when the sales of the day were over; we could keep the stock purchased through the day in the government stables during the ensuing night; but the quartermaster made an order that the money for the purchases intended to be made during the day must be deposited with the clerk of sales, or each horse or mule must be paid for as purchased. O. W. Barrett, however, made an arrangement with the quartermaster by
100 which he could settle every night at his office for stock purchased by him the preceding day. Barrett bid off the horses and mules in his own name, & settled for them in the way agreed upon when he would get the bill of sales for them. We bought in this way, including the three mules accepted by me among the small lot purchased before I got there, and the two horses, forty-three head of mules and fifty-two

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head of horses. We had up to the 8th day of September, 1865, purchased all the horses but two, which we purchased on that day, and twenty-eight head of mules, which we purchased on the ensuing day, that were purchased there for defendant and Mark W. Barrett. Two horses were all the stock we purchased on the 8th day of September, and (28) twenty-eight mules were all the stock purchased on the 9th day of September, when we quit purchasing; I think a man by the name of Hunter bid off one mule on the last day we purchased for us, at O. W Barrett's request. The plaintiff never bid off any of the stock; was only in Little Rock the two last days of the sale, and was at the sales but once, and that was only a few minutes on the 8th day of September, 1865, being the
101 last day but one we purchased stock. On my way down the river to Arkansas, I went on the steamer Albert Pearce, and made an engagement with him to take the stock purchased for me from Duvall's Bluff to St. Louis, Mo., at seven dollars per head on her next trip; he said that was under their usual rates, but if I would ship a hundred head, or something near it, of horses and mules on his boat from Duvall's Bluff to St. Louis, that he would take them for that price, and I was to let him hear from me in time to save room for me on the boat; I learned on the 8th day of September, 1865, that the boat would leave Duvall's Bluff on the 11th of September for St. Louis, and informed O. W. Barrett of my arrangement with the captain of that boat, and that the purchases must all be made on that day to meet the engagement; hence the purchase of so many mules on the 9th, at such high figures, for I also told Mr. Barrett that we must make such purchases if we had to pay a great deal more for the stock, as I could make up the difference by meeting my engagement with the captain of the Albert Peirce. When we got through buying on the ninth, I prepared to start on the evening
102 of the 10th of September, 1865, with the stock from the Hicks farm across the country to Duvall's Bluff, for we had to travel through the route at night on account of the heat & flies; and I instructed O. W. Barrett to telegraph for me from Little Rock to the captain of the steamer Albert Peirce that I was coming with the stock, and to save room for it on his boat; and he requested me to select for him, out of the "I. C." stock of horses belonging to him and running in the same pasture with mine, such as I thought were the best and would be the most saleable at St. Louis; I done so, and selected out thirty-six head of horses branded "U. S.," "I. C." and "R." The horses and mules we purchased for defendant and Mark W. Barrett were all branded "U. S." and "R." The "I. C." stock was condemned stock, and of but little value; our stock was not condemned stock, and was fair stock when in order. I left the Hicks farm with our stock, (I mean defendant's and Mark W. Barrett's horses and mules,) and also the horses of O. W. Barrett, selected by me for sale, on the evening of the 10th day of September, 1865, and arrived with them at Duvall's Bluff on the ensuing day. I went to the
103 captain of the steamer Albert Peirce, & asked him if he had a place for my stock. He said that he had about given me out, and feared he could not make room for my stock. I asked him if Barrett had not sent him a telegraphic dispatch from Little Rock, stating that I would be there; that I had instructed him to do so. He said he had not received any dispatch or word of any kind, but that he would go up or send to the office and see if any had come; and done so, and found the dispatch there for him from Barrett, as I had directed; whereupon he said he must and did make room for my stock, and took them aboard of the boat, also the stock of O. W. Barrett; two of Barrett's hands, (one by the name of Corley,) and another man who assisted me

with the stock in getting it out of the pasture across the country and on board the boat. Barrett, as he informed me, brought them along to take care of his stock. In driving the stock across the country, from the Hicks place to Duvall's Bluff, I lost three (3) of defendant's and Mark W. Barrett's mules and one of their horses; one was a humped-backed mule. I took care of defendants' mules and horses while on
104 board the boat; bought feed for them; and, at my instance, O. W. Barrett, who came on board the boat, drew a draft in favor of the clerk of the boat, on H. F. Lewis & Co., at Lincoln, Ill., to pay the freight on them for $700 00. We landed at St. Louis on or about the 20th day of September, 1865. Charles E. Coddington, son of defendant, met us there to have the horses and mules shipped by rail from St. Louis to Lincoln, Ill.; but I, fearing the result of such a shipment, on account of the starved, poor, and feeble condition of the horses and mules, determined not to ship them, but to drive them out into Illinois a short distance and pasture and recruit them for a few days, and then drive them home. O. W. Barrett could find no sale for his horses, and made an arrangement with Charles E. Coddington to have them sent up with us to Lincoln, which was done; his hands come with them. On board the boat there was a man who had some mules for sale, and O. W. Barrett informed me of the fact, and said for me to go and see the mules and learn the price of them, and if the mules and prices suited, he would buy them for me; I done so, and informed him of the fact, and he bought
105 five mules that I selected out, for $400 00, for defendant and Mark W. Barrett, which I took charge of and brought away with the rest. I hired hands at St. Louis to help me drive the horses up home, who were paid for their services by defendant. I pastured the stock a few days at Mrs. Stellings's farm in Illinois, this side of St. Louis, and then brought them to Lincoln, where I arrived on or about the last day of September, 1865, with the stock, and delivered it over to my brother, the defendant. I, however, sold one mule on the road between St. Louis & Lincoln for $175 00, and accounted to my brother and Mark W. Barrett for it. The horses and mules in controversy, with the exception of the five on board the steamer Albert Pearce, were all purchased at the government sales at Little Rock at the time, and, I have stated, for the defendant and Mark W. Barrett, and were selected by me, with the exception of the three mules and one horse purchased before my arrival there, and bid off, under my directions, for them, and I took charge of and branded the stock, pastured it, controled, fed it, and brought it home, and delivered it to my brother, as before stated.
106 The three mules and horse which got away from me between Hicks's place and Duvall's Bluff, went back to the Hicks place; at least, so I was afterwards informed, and when another lot, or the balance of O. W. Barrett's stock, was shipped from there to him at St. Louis, they came with it, and I was at St. Louis, at the request of O. W. Barrett, to take charge of that lot of stock for him or assist him about, and, in company with him, selected out the runaway mules and horse. The whole lot were afterwards taken up to Lincoln, Illinois, when my brother James Coddington, and Mark W. Barrett, through me, got the runaway mules and horse. When the stock was bid off, Barrett advised me to brand it so that it might be known if lost. The only branding-iron that could be had was one with the letter "R," which had been used by him (Barrett) and Richardson, and I used that in branding. The stock was bid off in the name of Barrett, and I did not know until the close of the sales that the bills of sale were made out in the name of Richardson. When I spoke to Barrett about the bills of

sale being in the name of Richardson, he said that would make
107 no difference. The bills of sale (here shown) were handed to me by O. W. Barrett after the stock had arrived at Lincoln, and he directed me to select from them those bills of sale for the stock purchased for Coddington & Mark W. Barrett.

The bills of sale referred to were here given in evidence, and the following is a sample of said bills; they being alike in form, the filling-up only differing as indicated by being underscored; the balance being printed:

OFFICE OF POST QUARTERMASTER,
Little Rock, Ark., Aug. 24th, 1865.

I certify that I have this day sold at public auction to L. Richardson one U. S. mule, of the following description:

Color.	Hands high.	Brand on left shoulder.	Under mane on left neck.
Bay.	14½.	U. S.	S.

For the sum of ninety dollars ——— cents, and that said mule has been paid for.

G. H. DOBYINS,
Capt. and Assistant Q. M. Post.

The description, date, and whether horse or mule, and amount paid for same, and the purchaser in three instances, being O. W. Barrett, being the only difference in said bills.

108 Edward Coddington, being first duly sworn, testified for defendant, that he is a son of defendant; was sent down to St. Louis about the 20th September, 1865, by his father, to assist Samuel Coddington in driving the stock expected there about that time, to defendant's farm in Logan County, and also to make arrangements for the stock on its arrival in Saint Louis, a day or two after he got there on the steamer Albert Pearce. When the stock arrived, on consultation with Samuel Coddington, who was along with the stock, and in charge of them, concluded to drive them out a few miles from Saint Louis, on the Illinois side, to the farm of Stallings, and let them remain there a few days to rest and strengthen before driving them up. His father sent with him $115 to pay expenses in getting them up, which was so applied. I saw O. W. Barrett at Saint Louis. There was a lot of stock in company with the rest, which was marked I. C. Barrett said he wanted to send this stock up with the rest, and wanted it taken care of until he could make the arrangement for it. Corley was along with the stock.
109 About the last of September all the stock was driven up to Logan County together.

William F. Ryan, being sworn, stated that he was acquainted with a man by the name of Corley who was attending to some stock that had been brought into Logan County, Illinois, from Little Rock, in the fall of 1865. I got acquainted with him while he was in Logan County that fall. Was present one evening in Smith's store in Lincoln, where said

Corley was present, together with W. D. Wyatt and John Wyatt, where a conversation came up about the stock that had been driven up from Little Rock. Corley said in that conversation that the stock of Richardson & Barrett, the I. C. stock, was not worth a damn; that the stock that Coddington had bought was better stock. Corley further said at the same time that he was going to leave; that he was not going to attend to the stock (the I. C. stock) any longer.

George Boyden, on behalf of defendant, testified that he was a member of the firm of H. F. Lewis & Co. The firm transacted business at Lincoln, Illinois, and were commission merchants. The drafts
110 in evidence in this case, drawn upon H. F. Lewis & Co., were not paid by that firm, but were paid by the defendant, Coddington, himself. The drafts came to hands of the express company agent in Lincoln, and when presented to our firm, we referred the agent for payment to Coddington, who took them up. Had understood from Mark W. Barrett that these drafts were to pay for horses.

William Smith, being duly sworn, testified for defendant:

That the morning the stock arrived at Lincoln from Saint Louis he was examining the stock to find a lost mule. A man named Corley was with the stock, and witness asked him whose stock they were. Corley answered that they were Coddington's, and were bought at government sales. Corley further said that the stock marked "I. C." belonged to Richardson & Barrett. Witness knew Corley; had seen him before. The stock was then at the fair ground in Lincoln. John Wyatt came up whilst he was looking at the stock and talking to Corley.

John Wyatt, being duly sworn, testified for defendant as follows, to wit:

111 That he saw the stock in question the day it arrived at Lincoln. The stock was at the fair ground. Witness rode by where Smith (former witness) and a man with the stock, whom he afterwards knew as Corley, were talking, and looking at the stock. Witness asked of Smith (Corley standing by) whose stock it was. Smith replied that this gentleman, alluding to Corley, had informed him that the stock marked "I. C." belonged to Richardson and Barrett, and the balance to Coddington. This answer was given in the presence and hearing of Corley. Witness further testified that he was present one evening at Smith's store, in Lincoln, Ill's, some time after this, where Corley and others were present, and that Corley said, in conversation there at that time, that the "I. C." stock belonging to Richardson and Barrett was worthless, but that the Coddington stock was good stock. This was just before Corley left the county.

John V. Franklin testified that Corley boarded with witness two or three weeks whilst attending to the stock after its arrival in Logan County. When Corley first came he staid a few days at Cod-
112 dington's. In conversation with him Corley stated that he had helped up with Coddington's horses. Corley said that Richardson's horses were condemned stock.

Mr. Dustin, being duly sworn, testified for defendant, that M. W. Barrett proposed to him to go in with him in the purchase of horses at Little Rock. M. W. Barrett and Coddington afterwards went in together to buy the horses. Coddington made arrangements with us (Dustin & Musick) to raise the money. The drafts were paid by us as

they came, Coddington checking on us for them; knew for what purpose Coddington was paying the money; that the money was going on his horse and mule arrangement. Witness bought a pair of the horses of Coddington, in pursuance of a previous contract for them, before they arrived; got them a day or two after they arrived, and before O. W. Barrett's death.

This was all the evidence offered or introduced in the cause by either of the parties, and the court thereupon found the issue for the plaintiff, and assessed his damages at the sum of "five thousand dollars over and above three thousand dollars, allowed said defendant for expenses in keeping said horses and mules."

113 Whereupon the defendant moved the court for a new trial upon the grounds following, in the words and figures following, to wit:

LYMAN RICHARDSON } Motion for new trial.
v.
JAMES CODDINGTON. }

Defendant moves for a new trial herein for reasons following:

1st. The finding and judgment of the court is erroneous.
2d. The damages were erroneously computed.
3d. The finding as to the damages was not warranted by the evidence.

HAY, *for Def't.*

(Indorsed:) Filed July 9th, 1866.

P. P. ENOS, *Clerk.*

Which motion the court overruled, and rendered judgment upon the finding against the defendant; to which several findings and rulings of the court, in finding the issue for the plaintiff, in assessing the damages for the plaintiff, and in overruling the motion for a new trial, and in rendering judgment for the plaintiff, the said defendant, by his counsel, severally excepted at the time of such finding, overruling, and judgment respectively, and prays that this his bill of exceptions may be
114 signed and sealed by the court, which is done.

S. H. TREAT. [SEAL.]

(Indorsed:) Filed January 30, 1868.

J. A. JONES, *Clerk.*

The bond filed in said cause, the citation, and admission of service thereon, and the copy of the writ of error, with the indorsement thereon, which citation and writ were issued in said cause, and filed in said clerk's office in pursuance to law and the practice of this court, are in the words and figures following, to wit:

Bond.

Know all men by these presents, that we, James Coddington and Abraham Mayfield, are held and firmly bound to Lyman Richardson in the penal sum of ten ($10,000) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our administrators, executors, heirs, and assigns, jointly, severally, and firmly by these presents.

Given under our hands and seals at Springfield, this 18th day of July, in the year of our Lord one thousand eight hundred and sixty-six.

The condition of the above obligation is such, that whereas, at
115 the June term of the circuit court of the United States for the southern district of Illinois, in a certain action pending in said court wherein Lyman Richardson was plaintiff, and the above-bounden James Coddington was defendant, a judgment was rendered against the said Coddington for the sum of five thousand dollars, as damages in said cause, and costs of suit; and whereas the above-bounden James Coddington hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the said entitled cause by the circuit court of the United States for the southern district of Illinois, on the 18th day of July, A. D. 1866: Now, therefore, the condition of this obligation is such that if the above-bounden James Coddington shall prosecute his writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAMES CODDINGTON. [SEAL.]
ABRAM MAYFIELD. [SEAL.]

Sealed and delivered in presence of—
A. W. WOOD.

The foregoing bond was, on the 18th day of July, A. D. 1866, taken and approved by me.

S. H. TREAT, *Dist. Judge.*

(Indorsed:) Filed July 18, 1866.

J. A. JONES, *Clerk.*

116 UNITED STATES OF AMERICA, *ss:*

To Lyman Richardson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein James Coddington is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness Samuel H. Treat, district judge of the United States for the southern district of Illinois, and one of the judges of the circuit court of the United States for said district, this eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first.

[SEAL.] S. H. TREAT.

(Indorsed:) Circuit court United States, southern district of Illinois. James Coddington, plaintiff in error, ads. Lyman Richardson, defendant in error. Citation.
Filed Oct. 31st, 1866.

P. P. ENOS, *Clerk.*

We acknowledge service of the within citation this 31st day of October, 1866.

STUART, EDWARDS & BROWN,
Attorneys for Plaintiff.

117 *Copy writ and indorsement.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you or some of you, between Lyman Richardson, plaintiff, and James Coddington, defendant, it is alleged that manifest error hath happened to the great damage of the said James Coddington, as by his plea appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf:

You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you
118 have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Washington, this eighteenth day of July, in the year of our Lord one thousand eight hundred and six, and of our independence the ninety-first.

[L. S.] P. P. ENOS, *Clerk.*

(Indorsement:) Copy of a writ of error lodged in pursuance of the statute of the United States in such case made and provided, for the above-named Lyman Richardson, defendant in error. July 18, 1866.

(Also indorsed:) Filed July 18th, 1866.

P. P. ENOS, *Clerk.*

119 THE UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, John A. Jones, clerk of the circuit court of the United States for the southern district of Illinois, do hereby certify the foregoing to be a full, true, and complete copy of the papers, process, and proceedings in a suit determined in said court, wherein Lyman Richardson was plaintiff, and James Coddington was defendant, and the same now remain on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this third day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third year.

[SEAL.] J. A. JONES, *Clerk.*

JAMES CODDINGTON
vs.
LYMAN RICHARDSON } Assignment of errors.

In the Supreme Court of the United States, December term, A. D. 1866.

Now comes the said plaintiff in error and alleges that in the record and proceedings in said cause there is manifest error in this, to wit:

120 First. That the declaration in said cause, being in trover, claims and alleges ownership in the plaintiff below, either sole or of undivided half, of forty-five mules only, whereas the finding and judgment and assessment of damages was for an undivided half of forty-eight mules.

Second. The finding and judgment of the court was contrary to the evidence. The evidence showed the right of property to be in the defendant.

Third. The court erred in not granting a new trial.

Fourth. The judgment of the court should have been for the defendant and not for the plaintiff; wherefore, for the reasons aforesaid, the said plaintiff in error prays that the judgment aforesaid may be reversed and for nothing held, and he be restored to all things as before said judgment was rendered.

JNO. M. PALMER,
Att'y for Pl'ff.

IN THE

Supreme Court of the United States.

No. 182.—December Term, 1869.

JAMES CODDINGTON

vs.

LYMAN RICHARDSON.

Brief for the Plaintiff in Error.

WARD H. LAMON,

Of Counsel for Plaintiff in Error.

J. L. Pearson, Printer, corner 9th and D streets.

IN THE

Supreme Court of the United States.

CODDINGTON
vs.
RICHARDSON.

Error to Circuit Court for Southern District of Illinois.

This was an action of trover and conversion brought by Lyman Richardson against James Coddington.

The record does not show how or on what ground the court got jurisdiction. It does not appear that the parties are citizens of different states.

The property of the plaintiff alleged to have been found and converted by the defendant was *an undivided interest of one-half* in 64 horses and 45 mules.

The evidence shows very clearly that the horses and mules alleged to be found and converted by the defendant were never in the plaintiff's possession. This is proved beyond contradiction. But the plaintiff alleges that they were bought at a government sale by his partner, and were, therefore, or had been, the property of the firm to which he belonged. Let us see if the defendant had not a good title to them.

The following narrative of the facts is derived from the evidence contained in the bill of exceptions. If the judges will look carefully at the record we think they will find every fact verified.

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One Owing W. Barrett was or had been a quartermaster in the army. He was a citizen of Illinois, and his family resided at Lincoln, but he himself, in the summer or fall of 1865, was at Little Rock, Arkansas. He had a brother at Lincoln, Mark W. Barrett, who was a banker, and a member of the firm of H. F. Lewis & Co. This brother, Mark, made an agreement with Owing that the latter should purchase at government sales a limited number of horses for the former, and draw on Mark's banking firm of H. F. Lewis & Co. for the cost. The agreement was, that Owing should buy them for Mark, or for Mark and any person whom he might associate with himself in the business, and Mark would see Owing's drafts on Lewis & Co. paid when presented. Mark got his father-in-law, James Coddington, the defendant, to go in with him. The government sales were to commence at Little Rock in August, 1865. Mark Barrett and James Coddington got Samuel Coddington (who was a brother of James) to go to Little Rock as their agent to attend the sale, select the horses for Owing Barrett to bid upon, take possession of them, and bring them home. Samuel Coddington did go in that capacity and for that purpose. He did superintend the purchase, took possession of the horses and mules as fast as they were bid off by Owing Barrett, and kept them under his control until he brought them home and delivered them to Mark Barrett and James Coddington, who took them, kept them, and treated them as their own. They (James Coddington and Mark Barrett) paid for these mules to the uttermost cent. Owing Barrett did draw, pursuant to agreement, on H. F. Lewis & Co. for the whole price of them, and the bills were lifted by Mark Barrett and James Coddington. If an honest open purchase of chattels, accompanied by full payment of the price, and followed by immediate delivery of possession does not make an indisputable title, who is secure?

Let us now see what the pretence is upon which the plaintiff bases his claim.

He says that he and Owing Barrett were partners in this same business of purchasing and selling horses and mules; that the horses and mules purchased in August and September, 1865, by Owing Barrett were so purchased on account of that partnership; that the animals in controversy being purchased by O. Barrett while that partnership existed, he, the plaintiff, became, by virtue of that fact, the owner of a half-interest in them.

The plaintiff has taken great pains to prove the existence of a partnership between him and O. Barrett. It appears to be true that they had been engaged in that business together, before the August sales at Little Rock. It seems also true, that *some* horses and mules sold at that same sale, were bought by O. Barrett, for and on account of the partnership between himself and Richardson, the plaintiff. The evidence also shows, that O. Barrett, after the August and September sales, had in his possession a considerable quantity of stock belonging to himself and Richardson, as partners, which he was trying to sell at St. Louis. The existence of a partnership, therefore, of some kind, or to some extent, in the business of buying and selling mules and horses, is not denied. But there is not the smallest particle of proof to show what were the terms of the partnership. No written articles existed, and no evidence is found, even in the deposition of the plaintiff himself, which tends to show that O. Barrett obliged himself to make, or assist in making no purchases for other parties. There can be no boubt, whatever, that O. Barrett had a perfect right to assist his brother Mark, and Coddington in making their purchases. In doing so he violated no duty, express or implied, which he owed to Richardson. There was no competition between Mark Barrett and Coddington on the one hand, and O. Barrett and Richardson on the other. Both the parties got as many horses and mules as they wanted.

It is perfectly certain at all events, that in point of fact, the particular mules and horses now in controversy were not purchased by O. Barrett for himself and Richardson, but were bid off by him for M. Barrett and Coddington, delivered to, and paid for by them. Richardson was not at the sale. He was away in Nebraska and did not return until the 8th of September. The sales closed on the 10th. He was on the ground only once, and then for a very short time—in fact, only a few minutes. He does not pretend that he ever saw Coddington's mules and horses until he saw them in Illinois. But he thinks his partner purchased them for the firm. This is an inference merely from the existence of the partnership, and is contradicted by overwhelming evidence.

The transactions connected with this purchase have been somewhat confused by certain facts which we have not yet mentioned. At the same sale where these horses and mules were bought for Coddington and Mark Barrett, others were bought by O. Barrett for himself and Richardson. These latter were sent to be pastured near Little Rock, at a place called the Hicks farm. As the several horses and mules of Coddington and Mark Barrett were bought and delivered to Samuel Coddington, he was authorized to put them also on the Hicks farm and keep them there until the purchases were completed. When this was done and Samuel Coddington was ready to start home, O. Barrett requested him to take along with the stock of M. Barrett and Coddington such horses of his as he might find on the Hicks farm, and consider fit for the market. Samuel Coddington complied with this request, and took twenty-six horses which were the partnership property of O. Barrett and Richardson, along with the others to St. Louis. Thence all the stock together was driven across to Lincoln, none of it being in a condition to sell. The removal to Lincoln of the 36 horses was made by hands whom O. Barrett employed, and under an arrangement with Charles

E. Coddington, son of defendant, that they should be furnished with pasture when they got there. They were accordingly pastured along with the others for a time. O. Barrett was at Lincoln afterwards, while the stock was there, and never gave the least hint that he claimed, either for himself or Richardson, any part of it except the 36 horses which all parties admitted to be his. Those horses he promised Coddington he would take away and find another place to keep them, but before he could do so he died. This stock was delivered to Richardson and the administrator of O. Barrett, after O. Barrett's death. The defendant did not detain any horse or mule except what belonged to him and M. Barrett.

Another fact or two has probably obscured the case a little. O. Barrett suggested to Samuel Coddington that the horses and mules ought to be branded, as they were his, and handed over to him. A brand with the letter R was used because there was no other to be had. Samuel Coddington knew nothing of Richardson and thought R would do as well as any other mark. He and O. Barrett both agreed to adopt it as the mark of his constituents. After the sales were nearly over Samuel Coddington discovered and mentioned to O. Barrett that the bills of sale were all in the name of Richardson. It does not appear that O. Barrett had directed this to be done. But he said it should make no difference and it did not. He brought the bills of sale with him to Lincoln after the stock was there and delivered to Coddington, those which were for the horses and mules he bought and paid for.

O. Barrett may have behaved uncandidly to Richardson. He may have permitted him to believe that he was buying no stock except for Richardson and himself. If R.'s own statement be true O. Barrett did misrepresent to him the purpose for which Samuel Coddington was attending the sale. But there is no just reason for saying that O. Barrett charged Richardson in his accounts with the price of the mules and horses which Coddington and M. Bar-

rett had paid for and taken. There is no evidence on that point, direct or indirect, outside of the plaintiff's own statement. That is a mere general declaration that he paid or settled for one-half of all the stock purchased by O. Barrett at that sale. That these horses and mules were included in what he supposed to be all that was purchased is not shown. It is very certain that he knew nothing about this transaction, knew nothing of this stock, and can't possibly tell whether it was charged by O. Barrett against the partnership or not. Certainly it is not a thing that ought to be believed (even it were directly asserted) upon the uncorroborated testimony of the party who expects to profit by it at the expense of his dead partner's character and his living neighbor's pocket.

We submit that the judgment of the court below was wholly wrong. The evidence taken altogether gave the plaintiff no right to maintain trover for one-half the horses and mules.

It is admitted that O. Barrett parted with any interest which he ever had in the property. His title was vested in the defendant and M. Barrett. The record admits that by demanding only the undivided half. Can one joint owner of a chattel maintain trover against the other for his share of it? Is the undivided half of a horse actually converted by one joint owner when he refuses to deliver the whole horse to the other? Trover and conversion in a case like this is a legal absurdity. There is not a word of evidence to support the declaration, and the judgment of the court is erroneous if it be not *secundum allegata et probata*.

But if O. Barrett sold the partnership property of himself and Richardson, or did any act which vested his own title in a third party, and received the whole price of it, does not that same act equally divest the title of both parties? Each is the agent of both. Any act of one in or about the partnership property which binds one is binding on the other. If, therefore, O. Barrett could not re-

cover from Coddington, neither can Richardson. If Richardson himself had handed over these mules and horses upon seeing them paid for by the defendant, he would not be more completely estopped by his own act to recover them again than he is by the act of his partner.

This was not a sale by one of the partners of the partnership property. It was a purchase by one outside party from another of property to which the partners never had any title. One of them now undertakes to sue the purchaser for his share of it as partnership property. It is a sufficient answer to show that though the plaintiff was not present, his partner was; that he aided the defendant in making the purchase, and saw him pay the price to the seller. It makes no difference which of the two partners did this, for what is done by one is done by both.

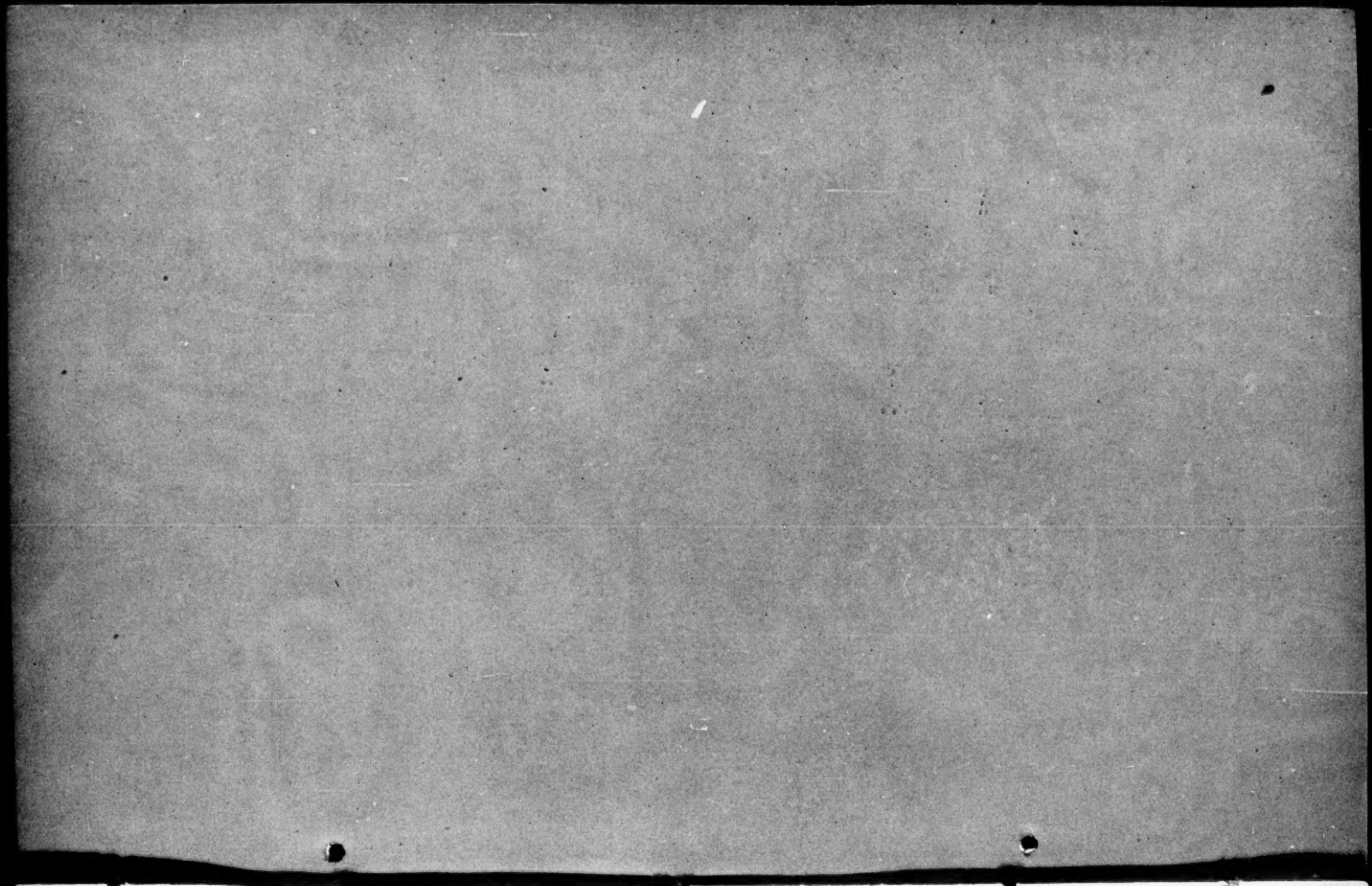
If a man goes to an auction sale and buys goods, and pays for them honestly, and they are delivered to him, and he takes them home, can another person legally claim them afterwards by merely proving that he had a partner who was present at the sale, and ought to have bought them for the firm of which he was a member? And does he not make his case worse when he shows that his partner fully consented to the defendant's purchase? And, worse still, when it appears that his partner not only permitted the purchase, but actively encouraged and assisted the defendant in making it and paying his money on it?

Look at this case in its worst possible aspect. Assume for the argument's sake that O. Barrett, after bidding off this property as the agent of Coddington and M. Barrett, and after causing it to be delivered to them, and seeing them pay for it, charged the price of the same property to the firm of Richardson and himself, on the false pretence that he had bought it for, and disposed of it to, the use of that partnership; would that give Richardson a right to recover against Coddington in a suit like this? Upon what principle of law or justice has he the right to sue anybody but the faithless partner who cheated him?

It will be found undeniably proved that the purchases were made at Little Rock for Coddington and Barrett, and paid for with their money. No one, we think, can read the testimony of Mark Barrett, Samuel Coddington, and James Coddington, without believing their version of the transaction. The correspondence between M. and O. Barrett, and the drafts paid by Coddington, make it impossible to doubt the truth of their statement. Indeed, no material part of it is contradicted by any witness, not even by Richardson himself.

The bill of exceptions is not made up in a very artistic style, but it is the way they do it in Illinois when they dispense with a jury, and intend to bring the whole question up for review in the most comprehensive way.

WARD H. LAMON,
Of Counsel for Plff. in Error



In the Supreme Court of the United States.

DECEMBER TERM, 1870.

JAMES CODDINGTON
vs.
LYMAN RICHARDSON.

Brief for Defendant in Error, by Lyman Trumbull.

Richardson sued Coddington in the circuit court of the southern district of Illinois, in trover to recover damages for the conversion by the latter of certain horses and mules of the former. The declaration contains two counts, the first for the conversion of the whole, and the second for the conversion of the undivided half of sixty-four horses and forty-five mules. By consent of parties, the case was tried by the court without the intervention of a jury, on the plea of the general issue and joinder.

The court found "that the plaintiff was the owner of an undivided interest of one-half in forty-eight mules and fifty-two horses, part of the property described in the declaration, and that the defendant converted said interest to his own use," and thereupon assessed the plaintiff's damages at five thousand dollars, and gave judgment accordingly. The defendant, Coddington, moved for a new trial, which being denied, he filed a bill of exceptions, setting forth the whole testimony in the case, but containing no exception to any opinion or decision of the court, except the general one of "finding the issue for the plaintiff in assessing the damages for the plaintiff, and in overruling the motion for a new trial, and in rendering judgment for the plaintiff." On such a record one is at a

loss to know what there is for this court to consider. The declaration is in the usual form, all the proceedings appear to be regular, and the finding of the facts by the circuit court, like the verdict of a jury, is conclusive here, and whether the "fact was rightly decided or not according to the evidence, is not open to inquiry in this court." 13 Statutes, 501; Bond *vs.* Brown, 12 How., 254; Kimbro *vs.* Bullitt, 22 How., 268; Guild *vs.* Frontin, 18 How., 135.

The motion for a new trial was addressed to the discretion of the circuit court, and its refusal constitutes no ground of error. Henderson *vs.* Moore, 5 Cranch, 11; U. S. *vs.* Buford, 3 Peters, 31; Warren *vs.* Norton, 20 How., 461; Freeborn *vs.* Smith, 2 Wallace, 176.

Counsel for plaintiff in error states in his brief that "the record does not show how or on what ground the court got jurisdiction. It does not appear that the parties are citizens of different States." This statement of counsel is not sustained by the record. The declaration states explicitly that "Lyman Robinson, who is a citizen of the State of Arkansas, plaintiff, complains of James Coddington, who is, and was at the commencement of this suit, a citizen of the State of Illinois and a resident in said district," &c.

It is also objected by counsel for plaintiff in error, that one joint owner of a chattel cannot maintain trover against the other for his share of it; but at the common law trover lies for an undivided part of a chattel, (Chitty's Pleading, 169,) and by statute in Illinois it is declared that "if any person shall assume and exercise exclusive ownership over, or take away, destroy, lessen in value, or otherwise injure or abuse, any property held in joint tenancy, tenancy in common, or coparcenary, the party aggrieved shall have his action of trespass or trover for the injury in the same manner as he would have if such joint tenancy, tenancy in common, or coparcenary, did not ex-

ist." Rev. Stat. of Ill. of 1845, ch. 56, sec. 2; Gross Compilation, ch. 56, p. 377. Benjamin *vs.* Stremple, 13 Ill., 467.

Were this court to examine the evidence, which in an action at law it will not do, it would be found fully to sustain the finding of the circuit court.

Believing that it will be apparent to the court that the writ of error in this case was sued out merely to delay the defendant in error in the collection of his judgment, he asks that damages may be awarded him in consequence.

LYMAN TRUMBULL,
Of Counsel for Defendant in Error.